The Law Society of Manitoba

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The Law Society of Manitoba Rules

Adopted by the Benchers of the
Law Society of Manitoba on October 31, 2002

RULES OF THE LAW SOCIETY OF MANITOBA

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PART 6
REPEAL AND COMING INTO FORCE OF RULES

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Rules of the Law Society of Manitoba

The governing body of the Law Society of Manitoba, hereinafter referred to as "the benchers", enacts the following rules:

Part 1
Interpretation

Meaning in Act applies

1-1 Unless the context otherwise requires, the meaning given to the words in The Legal Profession Act as amended from time to time applies.

Definitions

1-2 In these rules,

"Act" means The Legal Profession Act, S.M. 2002, c. 44;

"chief executive officer" means the chief executive officer of the society or an employee to whom the chief executive officer has delegated any of his or her powers, duties or functions;

"code" means the Code of Professional Conduct of the Law Society of Manitoba;

"Dean" means the Dean of the Faculty of Law of the University of Manitoba;

"law firm" includes one member or two or more members practising together, and may include:

(a) a sole proprietorship;

(b) a law corporation or limited liability partnership;

(c) a partnership or association of members or law corporations or a combination of both; (AM. 02/03; AM. 12/18)

(d) any other joint arrangement or legal entity that provides legal services. (ENACTED 12/18)

"**foreign jurisdiction**" means a country other than Canada or an internal jurisdiction of a country other than Canada; (ENACTED 05/11)

"LLP" means a limited liability partnership under Part 3 of The Partnership Act that is registered as a Manitoba limited liability partnership or an extra-provincial limited liability partnership under The Business Names Registration Act; (ENACTED 02/03)

"practising year" means the period commencing April 1st and ending March 31st in each year;

"public representative" means a person who is not a lawyer or a former lawyer and includes a bencher appointed under clause 7(1) of the Act; and (ENACTED 05/12)

"rules" means the rules of the Law Society of Manitoba.

Part 2
The Law Society

Division 1 - Administration

Archives

2.1 The archives of the society must be in the custody of the chief executive officer at such location as the chief executive officer deems appropriate.

Rolls

2-2 An alteration or addition must not be made to the rolls of the society except under the authority of a court of competent jurisdiction or the benchers.

Division 2 - Bencher Elections

Definitions

2-3 In this division,
"election day" means the 1st Wednesday in May in each even-numbered year.
(ENACTED 02/24)

Bencher election

2-3.1 The election of benchers in all electoral districts must be held on election day. (AM. 02/24)

Voting Time Limits

2-3.2 Ballots may be cast at any time on or after the third Tuesday in April but not later than 5:00 p.m. on the Tuesday immediately prior to an election day. (ENACTED 12/15) (AM. 02/24)

Electoral district boundaries

2-4 The boundaries of the electoral districts are as follows:

(a) subject to clauses (b) and (c) and (d), the boundaries of the electoral districts established under clauses (b) and (c) of section 5 of the Act are the same as the boundaries of the Western Judicial District, Northern Judicial District, Dauphin Judicial District, Central Judicial District, and Eastern Judicial District, respectively, as those judicial districts were defined in The Municipal Boundaries Act, R.S.M. 1970, c. M250, s. 7 to11;
Note: Section 7 to 11 of The Municipal Boundaries Act were repealed by S.M. 1982-83-84, c. 82.

(b) the Eastern Electoral District does not include the area described in clause (c);

(c) the City of Winnipeg Electoral District is the part of the City of Winnipeg that is

bounded by the highway commonly known as the Perimeter Highway.

(d) the Central and Dauphin Electoral District includes the combined boundaries of the Central Judicial District and the Dauphin Judicial District.

(AM. 12/15)

Qualifications of candidates for bencher

2-5 To be eligible to be a candidate for election as a bencher, a member of the society must:

(a) be a practising lawyer on the 1st Monday in March of the election year and have his or her name on the voting list on the 1st Monday in April of the election year;

(b) maintain his or her principal office in the district in which he or she seeks to be a candidate;

(c) be nominated for election as provided for under these rules; and

(d) not be a life bencher or an ex officio bencher.

(AM. 01/08)

Nominations in the Winnipeg district

2-6 The nomination of a candidate for election as a bencher in the City of Winnipeg Electoral District is valid only if:

(a) it is in writing, names only one candidate and is signed by at least five members of the society who maintain a principal office in that district and whose names are on the voting list;

(b) the nominee consents in writing to the nomination; and

(c) the nomination and consent are received by the chief executive officer on or before the 1st Monday in April before the election is to take place.

Nominations in other districts

2-7 The nomination of a candidate for election as a bencher in an electoral district of the province other than the City of Winnipeg Electoral District is valid only if:

(a) it is in writing, names only one candidate and is signed by at least two members of the society who maintain a principal office in that district and whose names are on the voting list;

(b) the nominee consents in writing to the nomination; and

(c) the nomination and consent are received by the chief executive officer on or before the 1st Monday in April before the election is to take place.

Nomination form

2-7.1 The nomination of a candidate for election as a bencher and the candidate's consent must be contained in the nomination form provided by the society. (ENACTED 01/08)

Decisions as to eligibility, validity of nominations and votes

2-8 The vice-president must decide questions about the eligibility of any candidate for election as a bencher, the validity of any nomination and the validity of any vote cast in the election.

Acclamation

2-9 If the number of candidates nominated does not exceed the number to be elected in an electoral district, the vice-president must declare that those nominated are elected as benchers for that district by acclamation.

Entitlement to vote

2-10 Only members who are practising lawyers on the 1st Monday in March of the election year and whose names appear on the voting list on election day are entitled to vote. A practising lawyer who maintains his or her principal office outside the province of Manitoba may only vote in the City of Winnipeg Electoral District. (AM. 03/05)

Voters list

2-11 On the 1st Monday in March in an election year, the chief executive officer must prepare an alphabetical list of voters and make this list available to members of the society within two business days thereafter. (AM. 02/24)

Rectification of list

2-12 A member of the society who has reason to believe that the voters list improperly includes or omits a name, or contains an error respecting the electoral district in which a member is entitled to vote, may report the error to the chief executive officer, who must promptly investigate the report and correct any error that exits.

CEO may establish procedures

2-12.1 The benchers may authorize the chief executive officer to:

(a) establish the procedures by which election materials are prepared and circulated and by which members may vote; and

(b) use electronic processes, including the internet, for the circulation of election notices, forms, ballots, documentation and other material.

(ENACTED 01/08)

Notice of election

2-13 By the 2nd Monday in March in an election year, the chief executive officer must circulate written notice of the election and a nomination form to each practising lawyer whose name appears on the voting list. (AM. 01/08)

Circulation of voting material

2-14 By the 3rd Monday in April in an election year, the chief executive officer must circulate to each practising lawyer whose name is on the voting list:

(a) a ballot that lists under each electoral district the names, in alphabetical order, of all candidates nominated for that electoral district;

(b) voting instructions;

(c) biographical information received from the candidates; and

(d) such other materials as may be required.

(AM. 01/08; AM. 02/24)

Secret ballot

2-14.1 The chief executive officer must ensure that all methods of voting preserve the anonymity of the voters and the secrecy of their vote. (ENACTED 01/08)

Voting for candidates

2-15 For ballots to be valid, the voters must:

(a) cast their ballots in accordance with the instructions and procedures established by the chief executive officer; and

(b) not vote for more candidates than the number of benchers to be elected in the district.

(AM. 01/08)

Rejection of ballots

2-16 A ballot that is not cast in accordance with the instructions circulated by the chief executive officer or is not received before election day is invalid. (AM. 01/08)

Votes in Winnipeg district

2-17 A practising lawyer entitled to vote in an electoral district other than the City of Winnipeg Electoral District is also entitled to vote in the City of Winnipeg Electoral District.

Votes outside Winnipeg district

2-18 No vote cast for a candidate in an electoral district, other than the City of Winnipeg Electoral District, shall be counted unless cast by a practising lawyer who maintains a principal office in the same electoral district as the candidate.

Election officials

2-19 Before each election the benchers must appoint:

(a) two persons to act as scrutineers at the election; and

(b) a person to act as deputy for the vice-president in case the vice-president is unable to act.

Custody of voting papers and counting of votes

2-20 Repealed (12/07)

Right to be present

2-21 Repealed (02/24)

Procedure on equality of votes

2-22 If there is an equality of votes for two or more candidates in any electoral district, the name of each candidate must be written on a separate piece of paper and placed in a suitable receptacle. The vice-president, in the presence of a scrutineer, must then draw at random a number of papers equal to the number of benchers in that district still to be elected and the candidate(s) named in the drawn paper(s) must be declared elected.

Declaration of candidates elected

2-23 The vice-president must declare elected the candidates who receive the greatest number of votes, up to the number of benchers to be elected in each district, and certify their election to the president. The president must report the results to the benchers at their next meeting.

Effect of failure to comply with Act and rules

2-24 Any accidental failure on the part of the president, vice-president or chief executive officer to comply with any of the provisions of the Act, rules, or the procedures established by the chief executive officer does not invalidate an election. (AM. 01/08)

Retention of documents

2-25 All ballots cast in the election and other election documents must be retained until all petitions against the election have been decided. (AM. 01/08)

Petition against election

2-26 Any person who lawfully voted in the election may file a written petition against the election of any candidate with the chief executive officer not later than 14 days after the election date. The petition must contain a statement of the grounds on which the election is disputed. The chief executive officer must provide a copy of the petition to the candidate whose election is disputed.

Committee to hear petition

2-27 The benchers must appoint a committee of benchers to hear the petition and the chief executive officer must give written notice of the day, time and place of the hearing to the petitioner and to the candidate whose election is disputed. After the hearing, the committee must report to the benchers, who must consider the report and declare whether the candidate whose election is disputed was or was not duly elected. Where the benchers declare that a candidate was not duly elected, they must declare some other eligible person elected.

Taking office and term

2-28 Persons elected or appointed as benchers take office on the first meeting of

the benchers following their election or appointment, except that a person against whose election a petition has been filed must not take office until the benchers declare that he or she has been duly elected.

Part year counts as a year

2-28.1 For the purposes of establishing when a Bencher becomes a Life Bencher, part of a year of service counts as a year of service. (ENACTED 06/13)

Failure to nominate enough candidates

2-29 When an electoral district fails to nominate enough candidates to elect the required number of benchers, the benchers must, with all convenient speed, appoint a practising member who maintains his or her principal office in the district with the vacancy to fill the vacancy.

Student bencher

2-30 Each year, on a date fixed by the chief executive officer, the students who are enrolled in the society's bar admission course must elect one student from among their number to be student bencher for a term of one year or until his or her successor is elected. The student bencher takes office at the first meeting of the benchers following his or her election.

Honorary appointments

2-31 The benchers may appoint a person an honorary bencher, ex-officio bencher or honorary member of the society. No fees or assessments are payable by honorary benchers or honorary members.

Appointed practising benchers

2-32 The benchers must appoint four practising lawyers as benchers in each even-numbered year. (ENACTED 12/15)

Qualification of candidates for appointed practising bencher

2-32.1 To be eligible to be a candidate as an appointed practising bencher, a member of the society must:

(a) be a practising lawyer on the 1st Monday in March of the appointment year;

(b) not be a life bencher or an ex-officio bencher;

(c) meet the criteria that are established from time to time by the benchers to achieve representation by region, demographics, type of law practice, professional, leadership or management skills or other identified skills and attributes. (ENACTED 12/15)

Division 3 - Bencher Meetings

Regular meetings

2-33 Bencher meetings must be held in Manitoba, unless the benchers direct otherwise. There must not be less than six meetings each year.

Additional meetings

2-34 Additional meetings may be convened by the president and must be convened at the request of five or more benchers.

Notice of bencher meeting

2-35 The chief executive officer must give such notice as is practicable to the benchers and all members of the society of the date, time, place and purpose of all bencher meetings.

Quorum

2-36 Seven benchers constitute a quorum. Business must not be transacted unless a quorum is present.

Entitlement to attend meeting

2-37 All members are entitled to attend bencher meetings but:

(a) only benchers are entitled to vote; and

(b) a member who is not a bencher must not speak without leave of the meeting.

Equality of votes

2-38 Each bencher is entitled to one vote on all matters, except that the presiding officer has an additional vote in the event of a tie.

Manner of voting

2-39 Voting must be by show of hands unless a bencher requests a vote by ballot.

Meetings in camera

2-40 The benchers may decide that any item of business be dealt with in camera, and if they do only benchers or benchers and specified employees of the society are entitled to be present during the discussion of the business item.

Presiding officer

2-41 The president, or in the absence of the president, the vice president or the immediate past president must preside at a bencher meeting. In the absence of the president, vice president and immediate past president, the benchers present must choose a bencher to preside at the meeting.

Proxy voting not allowed

2-42 A bencher is not entitled to vote by proxy.

Procedural issues

2-43 A dispute concerning the procedure to be followed at a bencher meeting that is not provided for in the Act or rules must be resolved in accordance with the most recent edition of Roberts Rules of Order.

Meeting by joining locations

2-44 The benchers may conduct a meeting by joining together two or more locations by means of communication that allows all participants to hear each other. A bencher participating in the meeting in that way is, for the purpose of these rules and calculation of a quorum, present at the meeting.

Rules

2-45 The benchers may make, amend, suspend or repeal a rule at any meeting.

Division 4 - Other Meetings

Annual general meeting

2-46 The benchers must hold an annual general meeting of the members of the society each year and the chief executive officer must give reasonable notice to all members of the date, time and place of the annual general meeting.

Quorum

2-47 Seven members of the society constitute a quorum at the annual general meeting.

Annual report and auditors

2-48 At each annual general meeting,

(a) the chief executive officer must present the society's annual report for the immediately preceding fiscal year, which must include the financial statements for the year and the auditor's report on those statements; and

(b) the members must appoint an auditor for the current year.

Voting

2-49 Members of the society are entitled to attend and speak at the annual general meeting. Each member who is present at the annual general meeting is entitled to one vote.

Division 5 - Election of Officers, Benchers and Committee Appointments

Nominating committee

2-50 No later than the month of March in each year, the benchers must appoint a nominating committee to propose candidates for the positions of president and vice-president and to recommend committee appointments and in each even numbered year, to recommend the appointment or re-appointment of practising lawyer benchers and lay

benchers and to propose a candidate for the position of officer-at-large. (AM. 01/08); (AM 05/18)

Composition of committee

2-51 The following persons must sit as members of the nominating committee:

(a) the president;

(b) the vice-president;

(c) four benchers consisting of;

(i) two practising lawyer benchers, provided that at least one bencher maintains his or her principal office outside the City of Winnipeg Electoral District; and

(ii) two lay benchers; and

(d) the immediate past president.

(AM. 05/11); (AM. 12/17)

Committee composition remains unchanged

2-51.1 The persons occupying the positions in rule 2-51 at the time of their appointment shall remain on the committee until the committee's work is concluded. (ENACTED 12/17)

Entitlement to vote

2-52 All members of the nominating committee are entitled to vote. (AM. 05/11); (AM. 12/17)

Designates

2-53 Repealed (12/17)

Nominations for president, vice-president

2-54 At a meeting of the benchers to be held in March or April in each year, the nominating committee must propose the name of at least one lawyer bencher candidate for the position of president and the names of at least two lawyer bencher candidates for the position of vice-president. Nominations of additional lawyer bencher candidates for the positions of president and vice-president may be accepted at such meeting, if accompanied by the written consent of each candidate and the written endorsement of two benchers present at the meeting. (AM. 01/08; AM 05/18; 02/24)

Election of president, vice-president at March or April meeting

2-55 Subject to rule 2-56, if only one candidate is nominated for president, he or she must be declared to be elected to that position by acclamation and failing acclamation, the benchers must conduct an election by casting ballots for the positions of president and vice-president. Candidates elected as president and vice-president take office at the May meeting of the benchers and hold office until their successors take office.

(AM. 01/08; 02/24)

Vice-President deemed to be an elected bencher

2-56(1) Pursuant to subsection 6(2)(d)(iii) of the Act, if the bencher holding the position of vice-president is an elected bencher at the time of a bencher election, he or she shall not be required to run for re-election and shall be deemed to be elected as a bencher for his or her electoral district, provided the vice-president:

(a) is a practising lawyer on the first Monday in March of the election year;

(b) has his or her name on the voting list on the first Monday in April of the election year;

(c) continues to maintain his or her principal office in the electoral district for which he or she was last elected a bencher; and

(d) is not a life bencher or an ex officio bencher.

(ENACTED 01/08) (AM. 06/08) (AM 05/18)

Vice-president deemed to be an appointed bencher

2-56(1.1) If the bencher holding the position of vice-president is an appointed bencher at the time of the bencher election, he or she shall not be required to apply for re-appointment and shall be deemed to be appointed as a bencher, provided the vice-president:

(a) is a practising lawyer on the first Monday in March of the appointment year;

(b) has his or her name on the voting list on the first Monday in April of the appointment year; and

(c) is not a life bencher or an ex officio bencher.

(ENACTED 05/18)

Failure of officers to be elected during an election year

2-56(2) During a year in which a bencher election is to be held:

(a) if the vice-president is not elected to serve as president at the March or April meeting of the benchers, he or she immediately ceases to be the vice-president and the successful candidate for president shall become the vice-president;

(b) if an elected bencher candidate is elected to take office as vice-president at the May meeting of the benchers and that individual fails to be re-elected as a bencher, then at the May meeting of the benchers the nominating committee must propose the names of at least two bencher candidates for the position of vice-president;

(c) nominations of additional bencher candidates for the position of vice-

president may be accepted at the May meeting if accompanied by the written consent of each candidate and the written endorsement of two benchers present at the May meeting. The benchers in attendance at the May meeting must conduct an election for the position of vice-president and voting must be by casting ballots.

(ENACTED 01/08) (AM. 06/08) (AM. 05/18; 02/24)

Failure of officers to be re-appointed during an election year

2-56(3) During a year in which a bencher election is to be held:

(a) if an appointed lawyer bencher candidate is elected to take office as vice-president at the May meeting of the benchers and that individual fails to be re-appointed as a bencher, then no later than the September meeting of the benchers the nominating committee must propose the names of at least two bencher candidates for the position of vice-president;

(b) nominations of additional bencher candidates for the position of vice-president may be accepted at the September meeting if accompanied by the written consent of each candidate and the written endorsement of two benchers present at the September meeting. The benchers in attendance at the September meeting must conduct an election for the position of vice-president and voting must be by casting ballots.

(c) if the lay bencher candidate appointed to take office as officer-at-large at the May meeting of the benchers is not re-appointed as a bencher, than at the September meeting of the benchers the nominating committee must propose the name of a lay bencher candidate for the position of officer-at-large.

(ENACTED 05/18) (AM. 02/24)

Term of officer-at-large

2-56(4) The term of the officer-at-large is two years. (ENACTED 05/18)

Committee appointments

2-57 At the May meeting of the benchers, the nominating committee must recommend the names of people to sit as members of bencher committees and in even numbered years, must recommend the name of a lay bencher to sit as the officer-at-large. (ENACTED 01/08) (AM 05/18)

Division 6- Bencher Vacancies and Removal

Removal of bencher from office

2-58 Where the benchers are of the opinion that a bencher has:

(a) failed, refused or is unable to fulfil the duties of a bencher; or

(b) conducted themselves in a way that renders the bencher unfit to continue to be a bencher;

the benchers may, at a regularly scheduled or special meeting of the benchers, by resolution supported by at least two thirds of the benchers in attendance at the meeting, remove that bencher from office.
(AM. 11/24)

Effect of disbarment, suspension, expulsion, resignation
2-59 Repealed (11/24)

Removal of appointed lay bencher
2-60 Repealed (11/24)

Term of appointment
2-61 A person appointed as a lay bencher or a practising bencher under section 7(1) of the Act must serve for a term of two years or until a successor is appointed, up to a maximum period of eight years. (AM. 12/15; 02/24)

Filling of vacancies
2-62 Unless the benchers decide it would be impractical to do so prior to the next regular election or appointment process, where a person ceases to be a bencher by operation of rules 2-58 through 2-60 or a vacancy results from any other cause, the vacancy must be filled as follows:

(a) in the case of a student bencher, the students who at the time of the vacancy are enrolled in the bar admission course must, with all convenient speed, elect another student from among their number to fill the vacancy;

(b) in the case of the Dean, the Faculty of Law of the University of Manitoba must, with all convenient speed, appoint a person who is a fulltime member of the academic staff of the Faculty of Law at the University of Manitoba to fill the vacancy;

(c) in the case of an elected bencher, the remaining benchers must, with all convenient speed, appoint a practising lawyer who maintains his or her principal office in the electoral district where the vacancy occurred to fill the vacancy; and

(d) in the case of an appointed practising bencher, the remaining benchers must, with all convenient speed, appoint a practising lawyer to fill the vacancy; and

(e) in the case of an appointed lay bencher, the committee mentioned in sub-section 7(1) of the Act must, with all convenient speed, appoint another person to fill the vacancy.

(AM. 12/15; 03/24)

Change of electoral district

2-62.1 If, during a term, an elected bencher relocates his or her principal office to a district that is different from the district in which the bencher was elected, the benchers may:

(a) permit the elected bencher to continue serving for the remainder of the term notwithstanding the resulting vacancy in the original district and the extra representation in the new district, provided that if the bencher runs for re-election the next term, he or she must run in the new district; or

(b) require the elected bencher to tender his or her resignation effective no later than the date that the elected bencher relocates his or her principal office to the new district, and, fill the vacancy in accordance with rule 2-62(c).

(ENACTED 02/24)

Division 7 - Committees

Appointment

2-63(1) The benchers may appoint any person and any number of persons as members of a committee of the benchers.

Delegation to committees and chief executive officer

2-63(2) The benchers may delegate to the chief executive officer or to a committee established by them the authority to do any act or exercise any power or jurisdiction that the benchers are authorized to do under the Act, except the power to make rules.

Standing committees

2-63(3) The benchers must appoint the following standing committees:

(a) admissions and education;

(b) complaints investigation;

(c) discipline;

(d) equity;

(e) nominating;

(f) practice and ethics;

(g) professional liability claims fund; and

(h) reimbursement claims fund.

Other committees

2-64 The benchers may appoint other committees as necessary.

Committee composition

2-65 Subject to rules 2-51, 5-70(2), 5-93(4) and 5-94(1), the benchers must appoint not less than two benchers to serve as members on all standing committees.

Appointment of chairperson

2-66 The benchers may appoint one member of each committee to be the chairperson or two members to be co-chairpersons and may appoint another member to be the vice-chairperson.

Vacancies

2-67 The benchers may terminate a committee appointment or appoint a person to fill a vacancy on a committee.

Ex-officio members

2-68 The president and vice president are ex-officio members of all committees except the:

(a) discipline committee, and

(b) the admissions and education appeals and trust safety appeals sub-committee.

(AM. 02/24)

Quorum

2-69 At all committee meetings except meetings of the complaints investigation committee, meetings of panels of the practice and ethics committee, and hearings held by panels of the admissions and education committee, the trust safety appeal committee and the discipline committee, at least half of the members of a committee are required to attend a meeting to constitute a quorum. (AM. 05/08) (AM. 10/19)

Member of standing committee must not be counsel

2-70 A member of a standing committee must not appear before the benchers or any bencher committees as counsel on behalf of the society or on behalf of a member. (ENACTED 06/11)

Bencher must not be counsel

2-70(1) Repealed (06/11)

Life bencher

2-70(2) Repealed (06/11)

Division 8 - Members

Categories of membership

2-71(1) The following are the categories of membership in the society:

(a) practising lawyers, as defined in section 1 of the Act;

(b) non-practising members;

(c) suspended members; and

(d) Canadian legal advisors.

(AM. 05/10; 10/10) (AM. 04/24)

Member in good standing

2-71(2) A member of the society is a member in good standing unless suspended from practising law under the Act or rules.

Non-practising members

2-72 Any member of the society in good standing may become a non-practising member by undertaking in writing to the chief executive officer that he or she will not practise law in Manitoba. (AM. 04/24)

Inactive members

2-73 Repealed (04/24)

Withdrawal from practice

2-74(1) Subject to subsection (4), a member who intends to withdraw from the practice of law in Manitoba and become a non-practising member must, before withdrawing, advise the chief executive officer in writing and obtain his or her approval of the member's intended disposition of all:

(a) open and closed files,

(b) wills,

(c) titles and other important documents and records,

(d) other valuables, and

(e) trust accounts and trust money,

which relate to the member's practice and are within the member's possession or power. (AM. 04/24)

Notice to society

2-74(2) Subject to subsection (4), a member who has withdrawn from practice under subsection (1) must, within three months after the withdrawal occurs, confirm to the chief executive officer in writing that:

(a) the documents and property referred to in clauses (a) through (d) of subsection (1) have been disposed of, and any way in which the disposition differs from that reported under subsection (1); and

(b) all trust accounts referred to in clause (e) of subsection (1) have been closed and that:

(i) all the balances have been remitted to the clients or other persons on whose behalf they were held or, with the consent of the client, transferred to another practising member with written instructions concerning the conditions attaching to them, and

(ii) any net interest earned on a pooled trust account has been remitted to the Manitoba Law Foundation in accordance with the provisions of the Act.

Extension of time
2-74(3) The chief executive officer may, upon application in writing by a member, extend the time limit referred to in subsection (2).

Non-application of rule
2-74(4) This rule does not apply to a member who is practising as a member of a law firm that will continue in existence and will continue to have possession and power over the documents, property, and accounts described in subsection (1).

Power to recover expenses
2-74(5) Where a member fails to comply with the requirements of this rule, the society may require the member to pay any expenses incurred by the society in the course of winding up the member's practice, including expenses for the storage and disposition of files, documents and other property relating to the member's practice.

Business name, address
2-75(1) A member must advise the chief executive officer of:

(a) the name under which the member, or his or her law firm or employer carries on business; and

(b) the address of his or her place of business.

Changes
2-75(2) A lawyer must immediately advise the chief executive officer of:

(a) any change in the lawyer's place of business; and

(b) any change in the address of the lawyer's place of business.

Supervision of law office
2-75(3) A member or law firm must not maintain an office unless the office is under the direct supervision of a properly qualified practising lawyer who is a member in good standing and who attends the office on a regular basis.

Notice of membership in another jurisdiction
2-76 A member must notify the chief executive officer immediately upon becoming a member of the law society or governing body of the legal profession in another Canadian jurisdiction.

Designated persons

2-77(1) A law firm, as defined Part 1 of the Rules, must:

(a) register with the law society in the manner prescribed by the chief executive officer;

(b) except for sole practitioners, designate two lawyers in the law firm to receive and respond to communications from the society on behalf of the firm;

(c) except for sole practitioners, designate two lawyers in the law firm to receive information from the society with respect to the following matters pertaining to members of the law firm:

(i) complaints, charges and disciplinary matters;

(ii) professional liability insurance reports, claims or processes;

(iii) the failure to pay monies owing to the society.

(ENACTED 12/18) (AM 10/19)

2-77(2) Subrules (1)(a) and (b) do not apply to:

(a) a public body such as government or a Crown corporation;

(b) a corporation that is not a law corporation;

(c) a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the law firm.

(ENACTED 12/18) (AM 10/19)

2-77(3) A designated representative is not responsible for a disciplinary violation by a law firm as a result of being a designated representative. (ENACTED 12/18)

2-77(4) A designated representative may be, but is not required to be, the law firm's trust account supervisor under Division 4 of the rules. (ENACTED 12/18)

Notice of bankruptcy

2-78(1) A member or law corporation must notify the chief executive officer immediately upon:

(a) making a proposal,

(b) making a voluntary assignment in bankruptcy, or

(c) being petitioned into bankruptcy,

under the Bankruptcy and Insolvency Act (Canada) and must provide the chief executive officer with:

(d) copies of all material filed in connection with the proceeding;

(e) a written undertaking in a form acceptable to the chief executive officer, that the member will not sign cheques drawn on any trust bank account; and

(f) a written undertaking in a form acceptable to the chief executive officer, that no director, officer, shareholder or employee of the law corporation will sign trust cheques drawn on any trust bank account. (AM. 10/21)

Approval of signatory
2-78(2) Upon receipt of an undertaking referred to in subsections (1)(e) and (1)(f), the chief executive officer may approve another practising lawyer as signatory for a trust bank account pursuant to rule 5-44(2)(b). (AM. 12/18; 11/25)

Notice of discharge
2-78(3) The member or law corporation must notify the chief executive officer immediately upon receiving an absolute order of discharge under the Bankruptcy and Insolvency Act (Canada) and provide the chief executive officer with a copy of the order.

Discharge of undertaking
2-78(4) Upon receipt of the absolute order of discharge, the chief executive officer must discharge the undertaking given in subsection (1). (AM. 10/21)

Waiver of undertaking
2-78(5) A member or law corporation may make written application to the chief executive officer for waiver of the requirement to provide the undertaking in subsection (1) and the chief executive officer may waive the undertaking if he or she concludes that its imposition would create an undue hardship for the member or law corporation.

Appearance before committee
2-78(6) Following notification to the chief executive officer under subsection (1), the chief executive officer may refer the matter to the complaints investigation committee, which may request the member or a voting shareholder of the law corporation to appear before the committee to discuss the proposal, voluntary assignment in bankruptcy or petition into bankruptcy, and such other matters as the committee considers appropriate. Failure to appear in answer to the request of the committee, without reasonable excuse, may constitute professional misconduct. (AM. 10/21)

Notice of judgment
2-79(1) A member or law corporation must notify the chief executive officer immediately upon a judgment becoming outstanding against the member or the law corporation and remaining unsatisfied for a period of 30 days, whether or not an appeal is entered.

Appearance before committee
2-79(2) Following notification to the chief executive officer under subsection (1), the chief executive officer may refer the matter to the complaints investigation committee, which may request the member or a voting shareholder of the law corporation to appear before

the committee to discuss the judgment, the financial resources and ability of the member or law corporation to satisfy the judgment, and such other matters as the committee considers appropriate. Failure to appear in answer to the request of the committee, without reasonable excuse, may constitute professional misconduct. (AM. 10/21)

Notice of charges

2-80(1) A member, articling student, applicant for admission, resumption or reinstatement, law corporation or visiting lawyer charged with an offence under a federal statute must, as soon as practicable, give written notice to the chief executive officer of:

(a) the particulars of the charge; and

(b) the disposition of the charge and any agreement arising out of the charge.

(AM. 12/06)

Appearance before committee

2-80(2) Following receipt of the notification under subsection (1), the chief executive officer may refer the matter to the appropriate law society committee and the committee may request the member, articling student, applicant for admission, resumption or reinstatement, visiting lawyer, or the voting shareholder of the law corporation to appear before it to discuss the charge or its disposition and such other matters as the committee considers appropriate. Failure to appear in answer to the request of the committee, without reasonable excuse, may constitute professional misconduct. (AM. 12/06)

Answer within 14 days

2-81(1) Where the society makes a written request to a member for a response within 14 days, the member must respond in writing within 14 days after receipt of the letter and must provide the information or explanation requested. Delivery of the letter to the mailing address of the member appearing in the records of the society is deemed to be prima facie receipt of the letter by the member.

Failure to reply

2-81(2) Failure to file a written response as required under subsection (1), without reasonable excuse, may constitute professional misconduct.

Division 8.1 – Professional Development

(ENACTED 05/11)

Definitions

2-81.1(1) In this division,

"continuing professional development" means learning activities that protect the public interest by enhancing the competence, integrity and professional responsibility of lawyers;

"**eligible activities**" are learning activities determined by the chief executive officer that

comply with the guiding principles for mandatory continuing professional development approved by the benchers. (ENACTED 05/11)

"IIAC training program" means the society's continuing professional development program on Indigenous intercultural awareness and competency. (ENACTED 10/23)

Professional Development

2-81.1(2) In order to enhance standards for the education, professional responsibility and competence of lawyers, the benchers may, from time to time, require lawyers to:

(a) report annually on the extent of their continuing professional development activities,

(b) complete a minimum number of hours of continuing professional development,

(c) complete mandatory training and educational requirements relating to the practice of law or a particular area of law,

(d) complete such other programs, training or reporting as the benchers determine may be appropriate for this purpose.

(ENACTED 02/11) (AM 05/11)

Requirement to report continuing professional development activities

2-81.1(3) On or before April 1st in each year, all members who maintained active practising status during the preceding calendar year or for any part of that year must file a report with the chief executive officer with respect to their continuing professional development activities during the preceding calendar year. The report must be in the form prescribed by the chief executive officer. (ENACTED 10/07) (AM. 02/11; 05/11)

Mandatory Indigenous Intercultural Awareness and Competency training

2-81.1(4) All practising lawyers must successfully complete the IIAC training program before April 1, 2025. (ENACTED 10/23)

Mandatory Indigenous Intercultural Awareness and Competency training for other members

2-81.1(5) When a new, non-practising, or suspended member who has not completed the IIAC training program begins or resumes active practice, they must successfully complete the IIAC training program by December 31 of the following calendar year from when they first begin or first resume active practice. (ENACTED 10/23) (AM. 04/24)

Extension of time for completion of training or reporting

2-81.1(6) The chief executive officer may extend the time for completion of the requirements set out in subsections (3), (4) and (5). (ENACTED 02/11) (AM. 05/11; 10/21) (AM. 10/23)

Failure to comply

2-81.1(7) Failure to complete the requirements set out in subsection (3), (4), (5) or (11), without reasonable excuse, may constitute professional misconduct. (ENACTED 02/11) (AM 05/11; 10/21; 10/23)

Mandatory continuing professional development

2-81.1(8) Subject to subsection (10), a practising lawyer must complete one hour of eligible activities for each month or part of a month in a calendar year during which the lawyer maintained active practising status. Where the lawyer maintained active practising status for three or more months in the calendar year, one and a half hours of the total eligible hours must relate to ethics, professional responsibility or practice management. (ENACTED 05/11) (AM. 10/21)

Carry over permitted only in exceptional circumstances

2-81.1(9) In exceptional circumstances, the chief executive officer may permit the carry over of not more than 12 hours of eligible activities to the next calendar year. (ENACTED 05/11)

Exemption in year of call

2-81.1(10) A practising lawyer is exempt from complying with subsection (8) in the calendar year in which the lawyer is called to the bar in Manitoba, but must comply with the requirement to report set out in subsection (3). (ENACTED 05/11)

Auditing compliance

2-81.1(11) In order to demonstrate compliance with subsection (8), a member must:

(a) keep all documents substantiating the completion of the eligible activities set out in the member's annual reporting until December 31 of the year following the year in which the activities were reported; and

(b) provide the documents set out in paragraph (a) to the chief executive officer on request, together with such further information as may be reasonably required by the chief executive officer for purposes of auditing the member's compliance with the rules.

(ENACTED 05/11)

Failure to complete continuing professional development activities

2-81.1(12)

(a) Where a practising lawyer fails to comply with subsection (4), (5) or (8), the chief executive officer may send a letter to the lawyer advising that he or she must comply with the requirements within 60 days from the date the letter is sent. A member who fails to comply within 60 days is automatically suspended from practising law until such time as the requirements have been met and a reinstatement fee paid.

(b) Where a member is suspended under paragraph (a) for a period of 30 days or less, the member must be reinstated on the date of payment, provided the requirements under subsection (4), (5) or (8), as the case may be, have been met.

(c) Where a member is suspended under paragraph (a) for a period exceeding 30 days, then in addition to meeting the requirements under subsection (4), (5) or (8) and paying the reinstatement fee, the member must apply to resume active practice under rule 5-28.2.

(ENACTED 05/11) (AM. 09/13; 10/21; 10/23)

Referral to complaints investigation committee

2-81.1(13) Where a member is suspended more than once for failing to comply with subsection (8), the chief executive officer may also refer the matter to the complaints investigation committee for its consideration. (ENACTED 05/11)

Division 8.2 – Annual Member Report

(ENACTED 05/11)

Annual member report

2-81.2(1) On or before April 1st in each year, all members who maintained active practising status during the preceding calendar year or for any part of that year must complete and file an annual member report in the form prescribed by the chief executive officer. (ENACTED 02/11)

Extension of time for filing annual report

2-81.2(2) The chief executive officer may extend the time for a member to file the report required under subsection (1). (ENACTED 02/11)

Failure to file

2-81.2(3) Failure to complete and file the report required in subsection (1) without reasonable excuse may constitute professional misconduct. (ENACTED 02/11)

Division 9 - Fees and Assessments

Definition

2-82 In this division,

"member" does not include a student unless the context indicates otherwise.

Annual practising certificate

2-83 To obtain a practising certificate, a member must pay an annual fee to the society, consisting of:

(a) a practising fee and contributions to the education and reimbursement funds,

unless the member is exempt under rule 5-37.1, all to be paid each year:

(i) in full, on or before April 1st; or

(ii) in instalments, the amount and due date to be determined by the chief executive officer.

(b) a contribution to the professional liability claims funds, unless the member is exempt under subsection 19(3) of the Act or under rules 5-30(3) or 5-30(4), to be paid each year:

(i) in full, on or before July 1st; or

(ii) in instalments, the amount and due date to be determined by the chief executive officer.

(c) any other fee, assessment or levy imposed on practising lawyers under rule 2-85.

(AM. 02/04; 10/07; 10/10)

Proportionate payment

2-84 A member must only pay a proportional part of the annual fee for the practising year in which he or she is called or admitted or in which he or she resumes practise under rule 5-24, except no proportionate payment will apply to a surcharge or deductible payable under rules 5-31 and 5-32. The chief executive officer may require the proportionate part of the annual fee to be paid in full or in instalments.

Special fees, levies and assessments

2-85 The benchers may set any special fee, levy or assessment necessary for the society to pursue its purpose and carry out its duties.

Notice from society – practising fees

2-86(1) The chief executive officer must send to each practising lawyer written notice of:

(a) the amount of the annual practising and the amount of the contributions to the reimbursement and education funds. The notice must be sent on or before March 1st in each year;

(b) the amount of any special fee, levy or assessments under rule 2-85;

(c) the due date for payment, in full and by instalments, of any fee, contribution, levy or assessment.

(AM. 02/04; 10/07; 10/21; AM. 04/24)

Notice from society – contribution to claims fund

2-86(2) The chief executive officer must send to each practising lawyer written notice of the amount of the contribution to the professional liability claims fund. The notice must

be sent on or before June 1st in each year and include the due dates for payment in full and by instalments. (ENACTED 10/07) (AM. 10/21)

Late payment penalty

2-87(1) A practising lawyer who fails to pay any part of the annual fee set out in rule 2-83 must pay a penalty of $10 per day until the fee is paid, to a maximum penalty of $300.

Waiver of penalty

2-87(2) The chief executive officer may waive or reduce a penalty assessed under subsection (1).

Suspension for non-payment of annual fee, penalties

2-88 A member who fails to pay any part of the annual fee set out under rule 2-83 or a penalty assessed under rule 2-87 within 30 days of its due date is automatically suspended from practising law.

Reinstatement fee

2-89(1) A member who is suspended from practising law under rule 2-88 must pay a reinstatement fee in addition to any fee or penalty owing in order to be reinstated to practice. The member must be reinstated on the date of payment. (AM. 10/21)

2-89(2) If the member is suspended under rule 2-88 for a period of 30 days or less, the member must be reinstated on the date of payment. (AM. 10/21)

2-89(3) If the member is suspended under rule 2-88 for a period exceeding 30 days, then in addition to paying a reinstatement fee and any other fees or penalties owing, the member must apply to resume active practice under rule 5-28.2. (ENACTED 10/21)

Refund during practising year

2-90 A member who has paid the annual fee for a practising year and ceases to practise for any reason other than suspension or who becomes exempt from the professional liability claims fund assessment by operation of subsection 19(3) of the Act or rule 5-30(3) during that year, is entitled to a refund of a portion of the fee in an amount determined by the chief executive officer. (AM. 10/07)

Division 10 - Suspensions for Failure to Pay

Automatic suspension

2-91 A member is automatically suspended from practising law if he or she, within 30 days of the due date or within 30 days of any later date that the chief executive officer, upon application, has approved:

(a) fails to pay any fine or costs ordered to be paid by a discipline panel under subsections 72(1) and 72(2) of the Act;

(b) fails to pay the costs of the inspection of his or her accounts and records as required under rule 5-47(9);

(c) fails to pay any deductible owing under a group insurance contract under subsection 45(5) of the Act; or

(d) fails to reimburse the society for expenses incurred by the society in carrying out a custodial order obtained under subsection 57(1) of the Act or in winding up a member's practice under rule 2-74.

Reinstatement fee

2-92(1) A member who is suspended from practising law under rule 2-91 must pay a reinstatement fee in addition to the fees, costs, fines or expenses owing in order to be reinstated to practice. (AM. 10/21)

2-92(2) If a member is suspended under rule 2-91 for a period of 30 days or less, the member must be reinstated on the date of payment. (AM. 10/21)

2-92(3) If a member is suspended under rule 2-91 for a period exceeding 30 days, then in addition to paying a reinstatement fee and any other fees, costs, fines or expenses owing, the member must apply to resume active practice under rule 5-28.2. (ENACTED 10/21)

Suspension may be rescinded

2-93 A member who is suspended under rule 2-91 may apply to the chief executive officer for an extension of time to pay the monies owing. If the application is granted the suspension is deemed to be rescinded from the date of the suspension and any reinstatement fee owing may be waived.

Failure to pay within extended time

2-94 A member who is granted an extension of time to pay under rule 2-93 is automatically suspended from practising law if he or she fails to pay the monies owing within the extended period of time and the provisions of rule 2-92 apply.

Exception

2-95 Clause (a) of rule 2-91 does not apply to a member who appeals a decision of a discipline panel made under section 72 of the Act. Any fine or costs still owing after determination of the appeal must be paid within 30 days of receipt by the member of the certificate of decision of the Court of Appeal or within 30 days of any later date that the chief executive officer, upon application, has approved. A member who fails to pay is automatically suspended from practising law.

Reinstatement

2-96 Where a member is suspended from practising law under rule 2-95, the provisions of rule 2-92 apply.

Notice to courts

2-97 The chief executive officer must notify each member of the society and each of the chief justices of the Court of Appeal and the Court of Queen's Bench and the chief judge of the Provincial Court of the name of a member who is suspended under the Act or rules and the name of a law corporation whose permit is suspended.

Suspension in effect for more than 12 months

2-98 Repealed (10/10)

No refund of fees

2-99 A member who is disbarred, permitted to resign, suspended or who otherwise withdraws from practice for disciplinary reasons and has paid the practising fees and contributions in full or in part is not entitled to any refund for the period following the date of the disbarment, resignation, suspension or withdrawal.
(ENACTED 05/10) (AM 05/19)

Part 3
Authority to Practise Law

Division 1 - General

Pre-paid legal services plans
3-1 Repealed (12/03)

Definition
3-1.1(1) In this division,

"closed pre-paid legal services plan" means a plan that limits a plan member's right to select the lawyer of his or her choice to provide the legal services under the plan. (ENACTED 12/03)

Advertising of closed pre-paid legal services plans
3-1.1(2) The advertising and subscription materials of a closed pre-paid legal services plan must indicate plainly that plan members are giving up their choice of legal counsel under the plan. (ENACTED 12/03)

Division 2 - Temporary Practice under the Inter-Jurisdictional Practice Protocol

(Repealed 05/07)

Division 3 - Inter-jurisdictional law firms

Definitions
3-27 In this division,

"inter-jurisdictional law firm" means a law firm, not all of the members of which are members of the society, that maintains an office in Manitoba and an office in one or more Canadian or foreign jurisdictions;

"member" in relation to an inter-jurisdictional law firm means:

(a) a partner or voting shareholder of the firm, and

(b) a person carrying on the practice of law jointly, or in association with two or more people, or holding out to the public that he or she is carrying on the practice of law in that manner;

(AM. 02/03)

Permitted services of inter-jurisdictional law firm
3-28 An inter-jurisdictional law firm may provide legal services to the public in

Manitoba only if:

(a) at least one member of the firm:

(i) is entitled, as a member of the society, to practise law in Manitoba; and

(ii) practises law principally in Manitoba; and

(b) where the firm maintains an office in one or more foreign jurisdictions, the requirements of those jurisdictions, or a substantial number of them, are similar to the requirements in the Act and rules that apply to inter-jurisdictional law firms.

Books and records of inter-jurisdictional law firms

3-29 An inter-jurisdictional law firm must:

(a) make available to the chief executive officer, on demand, the books, records and accounts the firm is required to keep with respect to its practice in Manitoba; and

(b) keep those books, records and accounts in Manitoba.

Prohibition re: non-compliant firm

3-30 No member of the society shall practise in Manitoba as a member, employee or associate of an inter-jurisdictional law firm that does not satisfy the requirements of this division.

Limited authority of non-members to practise

3-31 Rule 3-28 does not entitle a person who is not a member of the society to practise as a lawyer in Manitoba beyond the scope of the rules set out in divisions 4 and 6 of this part. (AM. 02/13)

Division 4 - Foreign Legal Consultants

Foreign legal consultants

3-32 In this division, "foreign legal consultant" means a person who practises in Manitoba the law of a foreign jurisdiction in which the person is entitled to practise law. (AM. 02/03)

Application for permit

3-33 A person may apply for a permit to act as a foreign legal consultant by delivering a completed permit application and the required permit fee to the chief executive officer.

Issuance of permit

3-34 The chief executive officer may issue to an applicant a permit to act as a foreign legal consultant if he or she is satisfied that the applicant:

(a) is a member in good standing of the legal profession in the foreign jurisdiction in which the applicant is entitled to practise law;

(b) is a person of good character and repute;

(c) has practised the law of the foreign jurisdiction for at least three complete years, or has undertaken in writing to work, while acting as a foreign legal consultant, only under the direct supervision of a foreign legal consultant entitled to practise in that jurisdiction who has satisfied the three-year practice requirement;

(d) has provided a written undertaking that he or she will:

(i) not accept, hold, transfer or in any other manner deal with trust funds,

(ii) submit to the jurisdiction of the society and comply with the Act, rules and code, and

(iii) promptly notify the chief executive officer if he or she ceases to be entitled to practise law in the foreign jurisdiction or fails to satisfy any applicable legal education requirement of the foreign jurisdiction;

(e) carries professional liability insurance or a bond, indemnity or other security that:

(i) is reasonably comparable in coverage and amount to that maintained by the society, and

(ii) extends to services rendered by the foreign legal consultant while acting as such; and

(f) participates in an insurance or reimbursement program, or provides a fidelity bond or other security satisfactory to the chief executive officer, for the purpose of compensating claimants who have sustained pecuniary losses as a result of the foreign legal consultant's misappropriation or wrongful conversion of money or property entrusted to or received by the consultant in his or her capacity as a foreign legal consultant in Manitoba.

The chief executive officer may attach conditions to the permit.

Referral to the admissions and education committee

3-35 If the chief executive officer refuses to issue or renew a permit, the applicant may refer the matter to the admissions and education committee. The committee must direct the chief executive officer to:

(a) issue or renew a permit, subject to any conditions or limitations the committee may direct; or

(b) reject the application.

Written reasons

3-36 If an application is rejected, the admissions and education committee must, at the written request of the applicant, give written reasons for the decision.

Term of permit

3-37 Subject to rule 3-38, a permit issued under this rule is valid from the issue date shown on it until the last day of the same calendar month in the next year.

Permit ceasing to be valid

3-38 Notwithstanding rules 3-37 and 3-44, a permit issued under this rule ceases to be valid if the foreign legal consultant:

(a) is suspended as a result of proceedings under the Act; or

(b) ceases to comply with any of the requirements of rule 3-34.

Requirement for permit

3-39 Subject to rule 3-40, a person may act as a foreign legal consultant in Manitoba only if he or she holds a valid permit under this rule.

Dual qualification

3-40 Subject to rule 3-31, a member of the society who is also qualified to practise law in a foreign jurisdiction need not obtain a permit to act as a foreign legal consultant if he or she carries professional liability insurance or a bond, indemnity or other security that is reasonably comparable in coverage and amount to that maintained by the society and extends to services rendered by him or her as a foreign legal consultant.

Marketing legal services

3-41 A foreign legal consultant, when engaging in advertising or any other form of marketing activity in Manitoba,

(a) must use the term “foreign legal consultant”;

(b) must state the foreign jurisdiction in which he or she is entitled to practise law, and the professional title used in that jurisdiction; and

(c) unless he or she is a member, must not use any designation or make any representation from which a member of the public might reasonably conclude that he or she is a member.

Renewal of permit

3-42 A foreign legal consultant who intends to continue to act as such beyond the expiry of his or her permit must, before the permit expires, apply to the chief executive officer for a renewal of the permit. The renewal application must include evidence that the applicant continues to comply with the requirements set out in rule 3-34 and the renewal fee.

Issuance of renewal permit
3-43 The chief executive officer may issue a renewal permit to a foreign legal consultant who has complied with these rules.

Term of renewal permit
3-44 A renewal permit issued under rule 3-43 is valid for one year.

Application of complaints investigation and discipline
3-44.1 Divisions 6 and 8 of Part 3 of these rules apply to foreign legal consultants permitted to practice law in Manitoba under this division. (ENACTED 05/07)

Division 5 - Limited Liability Partnerships

Definitions
3-45 In this division,

"extra-provincial law society" means the governing body of the legal profession in another province or territory of Canada;

"extra-provincial limited liability partnership" means a limited liability partnership formed under the laws of another jurisdiction and registered as an extra-provincial limited liability partnership under The Business Names Registration Act; and

"Manitoba limited liability partnership" means a partnership that is registered under The Business Names Registration Act as a Manitoba limited liability partnership.
(Enacted 02/03)

Register
3-46 The chief executive officer must keep and maintain a register of LLPs containing the following information:

(a) the name and registered office address of the LLP and the registration number assigned to it;

(b) the date the chief executive officer approved the application of the law firm for registration as a LLP under The Business Names Registration Act;

(c) the date the law firm was registered as a LLP and the dates of the renewal of the registration;

(d) he names of members who are or have been partners in the LLP, or who own voting shares in a law corporation that is or has been a partner in the LLP;

(e) the date the registration of the LLP expired or was cancelled; and

(f) any other particulars that may be required.
(ENACTED 02/03)

Registration of Manitoba LLP

3-47 A law firm proposing to register as a Manitoba LLP under subsection 8.1(1) of The Business Names Registration Act must deliver to the chief executive officer:

(a) a completed application form;

(b) the required registration fee; and

(c) any other information that may be required by the chief executive officer.

(ENACTED 02/03)

Insurance and other eligibility requirements – Manitoba LLP

3-48 A member of the society who is a partner in a Manitoba LLP, or who owns voting shares in a law corporation that is a partner in the LLP, must:

(a) have and maintain professional liability insurance that provides coverage of at least $1,000,000 per occurrence and $2,000,000 in the aggregate; and

(b) be a practising lawyer as defined in Part 1 of the Act.

(ENACTED 02/03)

Certification for Manitoba LLP

3-49 If the chief executive officer is satisfied that

(a) the partnership and the partners meet all the eligibility requirements imposed under the Act and rules for practice as a LLP; and

(b) the partners are covered by liability insurance in the form and amount required by rule 3-48;

then he or she must issue a statement of certification to that effect pursuant to subsection 8.1(1) of The Business Names Registration Act. (ENACTED 02/03)

Registration of extra-provincial LLP

3-50 A limited liability partnership formed under the laws of another jurisdiction that proposes to register as an extra-provincial LLP under subsection 8.1(2) of The Business Names Registration Act must deliver to the chief executive officer

(a) a completed application form;

(b) the required registration fee; and

(c) any other information that may be required by the chief executive officer.

(ENACTED 02/03)

Insurance and other eligibility requirement – extra-provincial LLP

3-51 An extra-provincial LLP must comply with the practice requirements for extra-provincial LLPs imposed under the Act and rules, and a member of the society who is a partner in the LLP, or who owns voting shares in a law corporation that is a partner in the

LLP must:

(a) be a practising lawyer as defined in Part 1 of the Act: and

(b) have and maintain professional liability insurance that provides coverage of at least $1,000,000 per occurrence and $2,000,000 in the aggregate.

(ENACTED 02/03)

Practise by extra-provincial LLP

3-52 An extra-provincial LLP that maintains an office in Manitoba and an office in one or more Canadian jurisdictions may provide legal services to the public in Manitoba if:

(a) at least one partner of the LLP is entitled, as a member of the society, to practise law in Manitoba and practises law principally in Manitoba; and

(b) the other partners of the extra-provincial LLP are practising members of an extra-provincial law society.

(ENACTED 02/03

Books and records of extra-provincial LLP

3-53 An extra-provincial LLP must:

(a) make available to the chief executive officer, on demand, the books, records and accounts the firm is required to keep with respect to its practice in Manitoba; and

(b) keep those books, records and accounts in Manitoba.

(ENACTED 02/03)

Limited authority of non-members to practise through an extra-provincial LLP

3-54 Rule 3-52 does not entitle a person who is not a member of the society to practise as a lawyer in Manitoba beyond the scope of the rules set out in divisions 2 and 4 of this part. (ENACTED 02/03)

Certification for extra-provincial LLP

3-55 If the chief executive officer is satisfied that:

(a) the partnership and the partners meet all the eligibility requirements imposed under the Act and rules for practice as a LLP; and

(b) the Manitoba partners in the partnership are covered by liability insurance in the form and amount required by rule 3-51;

then he or she must issue a statement of certification to that effect pursuant to subsection 8.1(2) of The Business Names Registration Act. (ENACTED 02/03)

Proof of registration and renewal

3-56 A law firm must provide the chief executive officer with proof of:

(a) its registration as a LLP; and

(b) the renewal of its registration as a LLP;

within 15 days from the date of registration or renewal. (ENACTED 02/03)

Change in particulars

3-57 A LLP must immediately inform the chief executive officer in writing of:

(a) any change in the particulars set out in the applications filed under rules 3-47 and 3-50;

(b) any cancellation or expiration of its registration or any failure to renew its registration; and

(c) the dissolution or winding up of the partnership.

(ENACTED 02/03)

Notification of non-compliance

3-58 If the Society becomes aware of the failure of a LLP or one or more of its partners to maintain compliance with the requirements imposed on a LLP and its partners under the Act and rules, then the chief executive officer must provide written notification of the non-compliance to the Director appointed under The Business Names Registration Act. (ENACTED 02/03)

Notice to clients

3-59 Without delay after being registered as a LLP, the partnership must send, to all of its existing clients, the notice required under sections 71 and 79 of The Partnership Act. (ENACTED 02/03)

Disclosure of partnership information

3-60 All information and documents relating to a LLP received by the society are confidential and must not be disclosed to any person unless otherwise authorized by law except that:

(a) the information and documents may be used by the society for it to govern and administer its affairs; and

(b) the following information may be disclosed to any person on request:

(i) the name and registered office address of the LLP

(ii) a list of current partners; and

(iii) a list of partners as of a specified date.

(ENACTED 02/03)

Division 6 - Inter-Jurisdictional Practice Under the National Mobility Agreement

(ENACTED 07/03)

Definitions

3-61 In this division, unless the context indicates otherwise,

"business day" means any calendar day or part of a calendar day in which a lawyer provides legal services;

"discipline" includes a finding by a governing body of any of the following:

(a) professional misconduct;

(b) incompetence;

(c) conduct unbecoming a lawyer;

(d) lack of physical or mental capacity to engage in the practice of law;

(e) any other breach of a lawyer's professional responsibilities;

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of discipline;

(b) disbarment;

(c) a lawyer's resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;

(d) restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.

"entitled to practise law" means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

"federal government lawyer" means a lawyer who is employed by and providing legal services exclusively to the Government of Canada, including a lawyer in a management position; (ENACTED 09/24)

"governing body" means the Law Society or Barristers' Society in a Canadian common law jurisdiction, and the Barreau du Québec;

"home governing body" means any or all of the governing bodies of the legal profession in

Canada of which a lawyer is a member, and "home jurisdiction" has a corresponding meaning;

"lawyer" means a member of a governing body other than the society;

"liability insurance" means compulsory professional liability errors and omissions insurance required by a governing body;

"Mobility Defalcation Compensation Agreement" means the 2010 Mobility Defalcation Compensation Agreement of the Federation of Law Societies of Canada, as amended from time to time; (ENACTED 06/10)

"National Mobility Agreement" means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

"National Registry" means the National Registry of Practising Lawyers established under the National Mobility Agreement;

"permit" means an inter-jurisdictional practice permit issued under rules 3-67 and 3-74(2). (ENACTED 05/07)

"Protocol" means the Inter-Jurisdictional Practice Protocol signed on behalf of the society on February 18, 1994 as amended from time to time. (ENACTED 05/07)

"provide legal services" means to engage in the practice of law:

(a) physically in Manitoba except with respect to the law of a home jurisdiction; or

(b) physically in any other jurisdiction, with respect to the law of Manitoba; and

includes providing legal services respecting federal jurisdiction in Manitoba;

"reciprocating governing body" means a governing body that has

(a) signed the National Mobility Agreement; and

(b) adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement;

"resident" has the meaning respecting a province or territory that it has with respect to Canada in the Income Tax Act (Canada);

"Territorial Mobility Agreement" means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time. (ENACTED 05/07)

"visiting lawyer" means a lawyer who is entitled to practise law in a Canadian jurisdiction other than Manitoba and holds a valid practising certificate or its equivalent issued by the lawyer's home jurisdiction and "practising lawyer" has a corresponding meaning.

Application and interpretation

3-62(1) This division, unless otherwise stated,

(a) is intended to implement the provisions of the National Mobility Agreement; and

(b) applies to a visiting lawyer, who is a practising lawyer in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member.

(AM. 05/07)

Application of the Inter-Jurisdictional Practice Protocol

3-62(2) Repealed (05/07)

Lawyers providing legal services for the Office of the Judge Advocate General

3-62(3) Repealed (09/24)

Lawyers providing legal services exclusively to the Government of Canada

3-62(4) Notwithstanding this division:

(a) federal government lawyers are exempted from the temporary mobility requirements under rules 3-63(1) to (4); 3-64(2) and (3); 3-67(1) to (6); and 3-70(1) to (3);

(b) subject to subrule 3-62(4)(c) below, a federal government lawyer who appears before courts or tribunals in Manitoba and who establishes an economic nexus with Manitoba, must be a practising member in good standing of the society;

(c) notwithstanding subrule 3-62(4)(b) above, a federal government lawyer who appears before courts or tribunals in Manitoba during a temporary assignment or secondment in Manitoba, is exempted from the requirement to be a practising member in good standing of the society for the duration of the temporary assignment or secondment, provided that the lawyer is a member in good standing of another governing body; and

(d) a federal government lawyer who provides only advisory, policy and/or legislative services and who establishes an economic nexus with Manitoba is exempted from the requirement to be a practising member in good standing of the society, provided that the lawyer is a member in good standing of another governing body. (ENACTED 09/24)

Temporary mobility without a permit

3-63(1) A visiting lawyer who qualifies under subsection (3) may provide legal services in Manitoba without a permit for a maximum of 100 business days in any calendar year.

CEO may extend time

3-63(2) On application of a visiting lawyer who otherwise qualifies under subsection

(3), the chief executive officer may allow the visiting lawyer to provide legal services in Manitoba without a permit beyond the time limit set in subsection (1).

Qualifications for temporary practice

3-63(3) Subject to subsection (4), to qualify to provide legal services on a temporary basis under subsection (1) or (2), a visiting lawyer must at all times:

(a) be a practising lawyer in a home jurisdiction;

(b) carry liability insurance that

(i) is reasonably comparable in coverage and limits to that maintained by the society, and

(ii) extends to the lawyer's temporary practice in Manitoba;

(c) have defalcation compensation coverage from a governing body that extends to the lawyer's practice in Manitoba;

(d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction; (AM. 12/03)

(e) not be the subject of criminal or disciplinary proceedings in any jurisdiction;

(f) have no disciplinary record in any jurisdiction; and

(g) not establish an economic nexus with Manitoba contrary to rule 3-68.

Insurance exemption

3-63(4) The requirement in clause (b) of subsection (3) does not apply to a visiting lawyer who, if he or she was a member of the society, would be exempt under subsection 19(3) of the Act from the requirement to contribute to the society's professional liability claims fund with respect to legal services to be provided in Manitoba.

Compliance with Act and rules

3-64(1) The Act, these rules and the code apply to and bind a visiting lawyer providing legal services in Manitoba or respecting the law of Manitoba.

Responsibilities of visiting lawyer

3-64(2) It is the responsibility of a visiting lawyer providing legal services in Manitoba to:

(a) record and verify the number of business days in which he or she provides legal services in Manitoba or with respect to Manitoba; and

(b) prove that he or she has complied with these rules.

No holding out

3-64(3) A visiting lawyer must not hold out or allow himself or herself to be held out

as willing or qualified to practise law in Manitoba except as a visiting lawyer.
(ENACTED 05/07)

Appearing before federal courts and administrative tribunals

3-65 As an exception to the requirements in rules 3-63(1), 3-63(3)(d), 3-63(3)(e) and 3-63(3)(f), a visiting lawyer who is not disqualified under rule 3-68(1) may appear before any of the following tribunals, prepare for such an appearance and otherwise further the matter giving rise to the appearance, without a permit and regardless of the number of days involved:

(a) the Supreme Court of Canada;

(b) the Federal Court of Canada;

(c) the Tax Court of Canada;

(d) a federal administrative tribunal;

(e) service tribunals as defined in the National Defence Act;

(f) the Court Martial Appeal Court of Canada.

Trust funds

3-66 A visiting lawyer must not maintain a trust account in Manitoba and must:

(a) promptly remit funds received in trust to the visiting lawyer's trust account in the home jurisdiction; or

(b) ensure that trust funds received are handled

(i) by a practising member of the Society and deposited into a trust account controlled by that member; and

(ii) in accordance with the Act and these rules.

Application for an inter-jurisdictional practice permit

3-67(1) A visiting lawyer who does not qualify to provide legal services without a permit under rule 3-63 or is disqualified under 3-68 may apply for an inter-jurisdictional practice permit. The visiting lawyer must deliver to the chief executive officer:

(a) a completed permit application, including a written consent for the release of relevant information to the society;

(b) any required permit fee or renewal fee;

(c) a certificate of standing, in a form acceptable to the society, issued by each governing body of which the visiting lawyer is a member and dated not more than 30 days before the date of application;

(d) proof of professional liability insurance; and

(e) proof of defalcation coverage.

(AM. 05/07)

CEO may issue permit

3-67(2) On application under this rule, the chief executive officer may issue a permit, subject to any conditions and restrictions that he or she considers appropriate if, in the discretion of the chief executive officer, it is consistent with the public interest to do so.

Term of permit

3-67(3) A permit issued or renewed under this rule:

(a) subject to clause (c), is effective until one year from the date it was issued;

(b) if issued under rules 3-63(3) and 3-68(4), allows a visiting lawyer to provide legal services for not more than 100 business days in that year; and

(c) ceases to be valid if the holder of the permit

(i) ceases to hold a valid practising certificate or its equivalent issued by his or her home jurisdiction;

(ii) fails to maintain professional liability insurance as required under rule 3-63(3)(b); or

(iii) is suspended or disbarred in any jurisdiction.

(AM. 05/07)

Waiver of permit fee

3-67(4) Clause (b) of rule 3-67(1) does not apply to an application made by a visiting lawyer who is a member of a governing body in a jurisdiction in which:

(a) the visiting lawyer is entitled to practise law; and

(b) the governing body does not charge members of the society a fee for permission to practise law in the jurisdiction on a temporary basis.

(ENACTED 05/07)

Renewal of permit

3-67(5) Before expiry of a permit under clause (a) of subsection (3), the holder of a permit may apply for its renewal under subsection (1). (ENACTED 05/07)

Automatic revocation of permission to practise

3-67(6) A visiting lawyer practising in Manitoba with or without a permit, automatically ceases to be able to provide legal services in this province if he or she fails to meet or satisfy any conditions, limitations or requirement imposed under this division or division 7. (ENACTED 05/07)

Economic nexus with Manitoba

3-68(1) A visiting lawyer who has established an economic nexus with Manitoba is not permitted to provide legal services under this division.

Economic nexus defined

3-68(2) For the purposes of this division, an economic nexus is established by actions inconsistent with a temporary basis for providing legal services, including but not limited to doing any of the following in Manitoba:

(a) providing legal services beyond 100 business days, or any longer period allowed under rule 3-63(2);

(b) opening an office from which legal services are offered or provided to the public;

(c) becoming resident;

(d) opening or operating a trust account, or accepting trust funds, except as permitted under rule 3-66;

(e) holding oneself out or allowing oneself to be held out as willing or qualified to practise law in Manitoba except as a visiting lawyer.

Exception for affiliated office

3-68(3) A visiting lawyer who provides legal services in or from an office affiliated with the lawyer's law firm in his or her home jurisdiction does not, for that reason alone, establish an economic nexus with Manitoba.

Visiting lawyer may apply for call and admission

3-68(4) A visiting lawyer who becomes disqualified under this rule must cease providing legal services forthwith, but may apply under rule 5-27.1 for call and admission or under rule 3-67 for an inter-jurisdictional practice permit. (AM. 05/07; 10/10)

CEO may allow practice pending application

3-68(5) On application by a visiting lawyer, the chief executive officer may allow the visiting lawyer to continue to provide legal services pending consideration of an application under rules 5-27.1 or 3-67. (AM. 05/07; 10/10)

National Registry of Practising Lawyers

3-69(1) The chief executive officer must provide to the National Registry the current and accurate information about practising members required under the National Mobility Agreement.

Disclosure of registry information

3-69(2) No one may use or disclose information obtained from the National Registry except for a purpose related to enforcement of the Act and these rules.

Enforcement

3-70(1) The chief executive officer may require a visiting lawyer to:

(a) account for and verify the number of business days spent providing legal services;

(b) verify compliance with any rules specified by the chief executive officer; and

(c) disclose the name of each governing body of which the visiting lawyer is a member.

(AM. 05/07)

Failure to comply with CEO's request

3-70(2) If a visiting lawyer fails or refuses to comply with a requirement under subsection (1) within 20 calendar days, or such longer time that the chief executive officer may permit in writing:

(a) the visiting lawyer is prohibited from providing legal services without a permit;

(b) any permit issued to the visiting lawyer under rule 3-67 is rescinded; and

(c) the chief executive officer must advise the visiting lawyer's home governing body of the visiting lawyer's failure to comply and the consequences.

(AM. 05/07)

Application to admissions and education committee

3-70(3) A visiting lawyer who is affected by subsection (2) may apply to the admissions and education committee for restoration of any or all rights lost under that subsection and the committee may, in its discretion, grant the application, subject to any conditions it considers to be in the public interest.

Notice of federal offence

3-70(4) Repealed (12/06)

Disciplinary proceedings

3-70(5) The provisions of the rules and Act dealing with complaints investigation and discipline apply to a visiting lawyer providing legal services in Manitoba as though he or she was a member of the society. (ENACTED 05/07)

Member compliance

3-70.1 A member who provides legal services in another Canadian jurisdiction must comply with the applicable legislation, regulations, rules and code of professional conduct of that jurisdiction. (ENACTED 05/07)

Enforcement of fine

3-70.2 A fine imposed on a member by another governing body may be enforced under rule 2-91. (ENACTED 05/07)

Transfer under National Mobility Agreement and Territorial Mobility Agreement
3-71(1) Repealed (10/10)

Transfer examination not required
3-71(2) Repealed (10/10)

Certification regarding reading materials
3-71(3) Repealed (10/10)

Applicant has no greater rights
3-71(4) Repealed (10/10)

Members called to the bar in more than one jurisdiction
3-72(1) Repealed (05/07)

Application for insurance exemption
3-72(2) Repealed (05/07)

Responsibility for the conduct of discipline proceedings
3-73(1) If there is an allegation of misconduct against a member of the society while he or she is practising temporarily in another Canadian jurisdiction under the authority of provisions equivalent to rule 3-63, the society must:

(a) consult with that jurisdiction's governing body about the manner in which disciplinary proceedings will be conducted; and

(b) subject to subsection (2), assume responsibility for the conduct of the disciplinary proceedings.

Society may allow other governing body to assume conduct
3-73(2) The society may agree to allow the other governing body to assume responsibility for the conduct of disciplinary proceedings under subsection (1), including the expenses of the proceeding.

Primary considerations in reaching agreement under subsection (2)
3-73(3) In deciding whether to agree under subsection (2), the primary considerations will be the public interest, convenience and cost.

CEO to provide information
3-73(4) To the extent that it is reasonable in the circumstances, the chief executive officer must do the following on the request of a governing body that is investigating the conduct of a member of the society or a visiting lawyer who has provided legal services:

(a) provide all relevant information and documentation respecting the lawyer or visiting lawyer; and

(b) co-operate fully in the investigation and any citation and hearing.

Further application of subsection (4)
3-73(5) Subsection (4) applies when the society agrees with a governing body under subsection (2).

Proof of lawyer's guilt
3-73(6) A duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of professional misconduct, incompetence or conduct unbecoming a lawyer is proof of the lawyer's guilt.

Reimbursement Fund
3-73.1

(a) The provisions of the Protocol concerning claims for compensation for misappropriation apply to a claim made against the reimbursement fund involving inter-jurisdictional practice in a jurisdiction where a reciprocating governing body has not signed and implemented the Mobility Defalcation Compensation Agreement.

(b) The Mobility Defalcation Compensation Agreement applies to a claim against the reimbursement fund involving inter-jurisdictional practice in a jurisdiction where a reciprocating governing body has signed and implemented the Mobility Defalcation Compensation Agreement.

(ENACTED 05/07) (AM. 06/10)

Dispute resolution
3-73.2 If a dispute arises with another governing body concerning any matter under the National Mobility Agreement, the society may do one or both of the following:

(a) agree with the other governing body to refer the matter to a single mediator;

(b) submit the dispute to arbitration under Appendix 5 of the Protocol.

(ENACTED 05/07)

Division 7 - Temporary Practice by Lawyers from Non-Signatory Jurisdictions

(ENACTED 07/03)

Definitions
3-74(1) In this division, unless the context indicates otherwise,

"federal government lawyer" means a lawyer who is employed by and providing legal services exclusively to the Government of Canada, including a lawyer in a management position; (ENACTED 09/24)

"non-signatory jurisdiction" means a governing body in a Canadian jurisdiction that has not signed the National Mobility Agreement or adopted regulatory provisions giving effect to the agreement's requirements.

"visiting lawyer" has the same meaning as found in rule 3-61. (ENACTED 05/07)

Application for a permit
3-74(2) A visiting lawyer who is not entitled to provide legal services in Manitoba or respecting the law of Manitoba under division 6 of this Part may apply for an inter-jurisdictional practice permit by delivering to the chief executive officer the documents and any required permit fee required under rule 3-67(1) and the chief executive officer may issue or renew a permit, subject to any conditions and restrictions that he or she considers appropriate if, in the discretion of the chief executive officer it is consistent with the public interest to do so. (AM. 05/07)

Term of permit
3-74(3) Subject to rules 3-67(3)(c) and 3-67(6), a permit issued under subsection (2) is valid until the date of completion of the matter for which the permit was granted. (AM. 05/07)

Compliance with Act and rules
3-74(4) The Act, these rules and the code apply to and bind a visiting lawyer providing legal services under this division and the provisions of the rules and the Act dealing with complaints investigation and discipline apply to the visiting lawyer as though he or she was a member of the society. (AM. 05/07)

Application of division 6
3-74(5) Rules 3-62(4), 3-64(3) 3-65 and 3-66 apply to temporary mobility under this division. (ENACTED 05/07) (AM. 09/24)

Lawyers providing legal services exclusively to the Government of Canada
3-74(6) Notwithstanding this division, federal government lawyers are exempted from rules 3-74(2) and (3). (ENACTED 09/24)

Division 8 – Services Delivered by or through Civil Society Organizations

Definition
3-75 In this division, "civil society organization" means an organization registered with the society to deliver *pro bono* legal services to the organization's clients.
(ENACTED 04/21) (AM. 05/24)

Registration
3-76 In order to be registered with the society under this division, an organization shall complete and submit to the society the registration form required by the chief executive officer and shall adhere to the conditions therein.
(ENACTED 04/21) (AM. 05/24)

Provision of Legal Services through Registered Civil Society Organizations
3-77 A member may provide legal services to the clients of a civil society organization if:

(a) the member is an employee or independent contractor of, or a volunteer with the civil society organization,

(b) the civil society organization has registered with the Society in accordance with rule 3-76, and

(c) the member has the appropriate insurance as required under rule 3-83.

(ENACTED 04/21) (AM. 05/24)

Approval and De-registration

3-78

(1) The chief executive officer may approve or refuse the registration of an organization as a civil society organization.

(2) An organization may be de-registered as a civil society organization at the discretion of the chief executive officer for failing to comply with the conditions of its registration as determined by the chief executive officer.

(3) Members may not provide legal services through an organization whose registration has been refused or that has been de-registered by the chief executive officer.

(ENACTED 04/21) (AM. 05/24)

Requirement to file Annual Report

3-79 On or before March 31st in each year, a civil society organization must file a report with the society in the form prescribed by the chief executive officer.

(ENACTED 04/21) (AM. 05/24)

Member Control of Delivery of Services

3-80 A member providing legal services under this division must maintain control of the delivery of those services and must be able to take any action necessary to ensure that he or she complies with the Act, the rules and the code of professional conduct.

(ENACTED 04/21)

Multi-service Civil Society Organizations

3-81 A member providing legal services under this division may refer a client to an employee of the civil society organization who provides non-legal services, but the member shall ensure that no confidential or privileged information concerning the client is disclosed to the non-member employee unless the client gives his or her informed consent.

(ENACTED 04/21)

Fees

3-82

(1) Services provided by members under this division shall be provided at no cost to the client.

(2) Costs for disbursements in connection with the provision of legal services may be required from a client, including but not limited to court filing fees, photocopying costs, court reporting services and fees for experts.

(3) If costs for disbursements will be charged to a client receiving services under this division, the client must be informed of and understand his or her obligations prior to entering into the lawyer-client relationship.

(4) Neither members providing services under this division nor civil society organizations facilitating those services may give or receive any financial or other reward for the referral of clients or client matters.

(ENACTED 04/21)

Insurance Requirements

3-83 Members providing legal services under this division shall maintain professional liability insurance as required by sections 19(2) and (3) of the Act.

(ENACTED 04/21)

Part 4
Law Corporations

Register

4-1 The chief executive officer must keep and maintain a register of law corporations containing the following information:

(a) the name and registered office address of the law corporation and the permit number assigned to it;

(b) the date the initial permit was issued to the law corporation;

(c) the date the permit of the law corporation was renewed, expired, revoked or suspended; and

(d) any other particulars as may be required.

Corporate name certificate

4-2 A member must apply in writing to the chief executive officer for a certificate that the society consents to the incorporation of a law corporation under a proposed name. On receipt of the application the chief executive officer must:

(a) issue a certificate to the member if he or she is satisfied that the intended name complies with rule 5-112; or

(b) reject the application and notify the member in writing of his or her decision.

Application for permit

4-3 A corporation applying for a permit under subsection 32(1) of the Act must deliver to the chief executive officer:

(a) a completed permit application;

(b) a copy of all articles of incorporation and amendments thereto;

(c) a current certificate of status for the corporation; and

(d) the required permit fee.

Change in particulars

4-4 A law corporation must inform the chief executive officer of any changes in the particulars set out in the application filed under rule 4-3 by providing the chief executive officer with a statement of particulars within 15 days of the change.

Issuance of permit

4-5(1) Subject to subsection (2), when a corporation has filed the material required under rule 4-3, the chief executive officer, if he or she is satisfied that the corporation has complied with the provisions of section 32(1) of the Act, must issue a law corporation permit to the corporation entitling the corporation to practise law in Manitoba.

Refusal to issue permit

4-5(2) The chief executive officer may refuse to issue a permit to a corporation where:

(a) a permit of the corporation has been revoked; or

(b) a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose permit has been revoked.

Change of corporate name

4-6(1) A law corporation must apply in writing to the chief executive officer for a certificate that the society does not object to a specific change of name for the law corporation. On receipt of the application the chief executive officer must:

(a) issue a certificate to the law corporation if he or she is satisfied that the new name complies with rule 5-112; or

(b) reject the application and notify the law corporation in writing of his or her decision.

New permit

4-6(2) The chief executive officer must issue a new permit to a law corporation that has:

(a) obtained the certificate referred to in subsection (1);

(b) delivered to the chief executive officer a copy of the articles of amendment showing the change of name and the date it is effective; and

(c) paid any required fee.

Expiry of new permit

4-6(3) A new permit issued under subsection (2) is valid until the date on which the permit that it replaces would have expired.

Effective date

4-7 Subject to rule 4-8, a law corporation permit issued under rule 4-5 is valid from the effective date shown on it until the following March 31st.

Permit ceasing to be valid

4-8(1) A permit issued to a law corporation ceases to be valid if it is:

(a) not renewed by the corporation or renewal is denied by the chief executive officer;

(b) surrendered by the corporation to the chief executive officer;

(c) suspended; or

(d) revoked.

Effect of permit ceasing to be valid

4-8(2) When the permit of a law corporation ceases to be valid, the corporation must cease practising law in Manitoba.

Notification to director appointed under The Corporations Act

4-9 The chief executive office must provide written notification to the director appointed under The Corporations Act when a permit issued to a law corporation ceases to be valid.

Annual permit

4-10(1) On or before April 1st in each year, each law corporation entered on the register of the society must either:

(a) renew the law corporation permit for the following year by paying the annual renewal fee and filing any renewal information required by the chief executive officer; or

(b) file notification with the chief executive officer that the corporation will not be renewing its permit.

(AM. 02/11)

Issuance of renewal permit

4-10(2) Subject to subsection (3), when a law corporation has filed the information required under subsection (1)(a), the chief executive officer must, if he or she is satisfied that the law corporation continues to comply with the provisions of subsection 32(1) of the Act, issue a renewal permit to the law corporation. (AM. 02/11)

Refusal to renew

4-10(3) The chief executive officer may refuse to issue a renewal of a permit to a law corporation where:

(a) a permit of the corporation has been revoked; or

(b) a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose permit has been revoked.

Decision not to renew

4-10(4) Repealed (02/11)

Notice of permit renewal

4-11 On or before March 1st in each year, the chief executive officer must send a written notice of the annual permit renewal fee to each law corporation entered on the register of the society and holding an active permit. The notice may be mailed to the law corporation at its address appearing in the register of the society.

Automatic suspension of permit

4-12(1) The permit of a law corporation will be automatically suspended if the law corporation fails to pay the renewal fee or file the required renewal information within 30

days of the due date for payment and filing. (AM. 02/11)

Reinstatement

4-12(2) Subject to rules 4-10(2) and 4-10(3), the permit of a law corporation that is suspended under subsection (1) must be reinstated when the law corporation pays the fee and any penalty owing, completes and files the required renewal information and pays the prescribed reinstatement fee. (AM. 02/11)

Late payment penalty

4-13 A law corporation that fails to complete and file the required renewal information or pay the renewal fee must pay a penalty of $10 daily until the information is filed or the fee is paid to a maximum of penalty of $300. (AM. 02/11)

Waiver of penalty

4-14 The chief executive officer may waive or reduce a penalty assessed against a law corporation under rule 4-13 upon application by the law corporation.

Failure to pay penalty

4-15 The permit of a law corporation that fails to pay the late payment penalty assessed under rule 4-13 or any reduced penalty assessed under rule 4-14 within 30 days of the due date is automatically suspended and the provisions of rule 2-91 apply with the necessary changes in so far as they are applicable.

Revocation, suspension or imposition of conditions on permit

4-16(1) The chief executive officer may revoke, suspend or impose conditions on the permit of a law corporation that ceases to meet any of the conditions set out or referred to in subsections 32(1) and 37(1) of the Act. The permit of a law corporation that remains suspended under rules 4-12 and 4-15 for more than 12 months is automatically revoked. (AM. 06/03)

No renewal after revocation

4-16(2) No law corporation permit that has been revoked may be renewed, but a law corporation whose permit has been revoked under subsection (1) or whose permit has expired may make application for a new permit under rule 4-3.

Review of chief executive officer's decision

4-17 Where the chief executive officer:

(a) rejects an application under rule 4-2 or 4-6;

(b) refuses to issue a permit under rule 4-5; or

(c) refuses to renew a permit under rule 4-10(3);

the members affected by the chief executive officer's decision may apply in writing within 21 days of receipt of the decision for a review of the chief executive officer's decision by a committee designated by the benchers for that purpose.

Committee's decision

4-18 After considering any written submissions received from the member and chief executive officer, the committee must:

(a) confirm the decision of the chief executive officer; or

(b) vary the decision of the chief executive officer; and

(c) notify the member and chief executive officer in writing of its decision.

Disclosure of corporate information

4-19 All information and documents relating to a law corporation received by the society are confidential and must not be disclosed to any person unless otherwise required by law except that:

(a) the information and documents may be used by the society for it to govern and administer its affairs; and

(b) the following information may be disclosed to any person upon request:

(i) the name of a law corporation;

(ii) a law corporation's place of business;

(iii) whether a corporation has a valid law corporation permit;

(iv) whether a member is an employee or a voting shareholder of a law corporation; and

(v) whether a law corporation is a voting shareholder of another law corporation.

Part 5
Protection of the Public

Division 1 - Admissions

Definitions

5-1 In this division,

"appeals sub-committee" means the sub-committee of the admissions and education committee responsible for considering appeals of admissions decisions made pursuant to the rules in this division; (ENACTED 05/12) (AM. 09/17; AM. 04/19; AM. 05/20)

"articling student" means a person registered in the student register as an articling student; (ENACTED 05/07) (AM. 05/20)

"bar admission program" means the society's pre-call licensing program; (ENACTED 04/04)

"committee" means the admissions and education committee;

"CPLED program" Repealed (05/20)

"law student" means a person enrolled in a law degree program and registered in the society's student register as a law student; (ENACTED 05/07)

"NCA" means the National Committee on Accreditation of the Federation of Law Societies of Canada; (ENACTED 04/13)

"principal" means a practising lawyer who has been approved by the chief executive officer to act as a principal. (AM 05/20)

"rolls" includes the Law Society's electronic records for the purposes of s. 17 of the Act. (ENACTED 05/20)

Committee objectives

5-2 The role of the committee is to:

(a) advise the benchers on policies relating to articling, admissions and education issues;

(b) consider appeals of decisions to terminate articles for academic misconduct and admissions decisions made pursuant to the rules in this division and conduct hearings as required; and

(c) take any steps and delegate any authority necessary for the committee to carry out its responsibilities.

(AM. 05/07; AM. 10/07; AM. 09/17; AM. 05/20)

Participation of dean

5-3 The benchers must appoint the Dean of the Faculty of Law at the University of Manitoba to sit as a committee member. (AM. 05/07)

Presentation to the Court
5-3.1 Re-numbered (05/20)

Admission of Articling Students

Application for admission as an articling student
5-4(1) Subject to rules 5-4.1, an applicant for admission as an articling student must,

(a) provide proof that he or she:

(i) has a bachelor of laws degree or juris doctor degree from a faculty of common law at a Canadian university approved by the Federation of Law Societies of Canada (a "Canadian common law degree") dated not more than 6 years before the date of the application for admission; or

(ii) is the recipient of a certificate of qualification from the NCA dated not more than 6 years before the date of the application for admission;

(iii) is of good moral character and a fit and proper person to be admitted; and

(iv) has entered into an articling agreement with a principal;

(b) submit an acceptable education plan;

(c) furnish all documentation required by the chief executive officer; and

(d) pay the student admission fee under subsection 19(1) of the Act.
(AM. 06/03; 04/04; 12/05; 05/07; 10/07; 10/08; 10/10; 02/13; 04/13; 05/20)

Approval of applicants
5-4(2) The Chief Executive Officer may admit a student who applies under subsection (1) or refuse to admit or impose conditions or restrictions on the applicant's admission. (ENACTED 10/10)

Exception: when permission is required
5-4.1 An applicant for admission as an articling student who is the recipient of a "Canadian common law degree", or a certificate of qualification from the NCA, dated more than 6 years before the date of the application, must apply to the society for permission to be admitted as an articling student and the chief executive officer may refuse the application or grant the application, with or without conditions. (ENACTED 12/05) (AM. 05/07; 10/07; 04/13; 05/20)

Failure to file admissions documents by deadline
5-4.2 Repealed (05/20)

Joint responsibility of articling student and principal to file articling agreement to file education plan
5-4.3 Repealed (05/20)

Failure to file articling agreement education plan by deadline
5-4.4 Repealed (05/20)

Exception: when common law degree required by NCA
5-4.5 Repealed (05/20)

Articling and bar admission program
5-5(1) Subject to subsection (4), every articling student must:

(a) successfully complete the bar admission program and the term of articles within 3 years from the date of commencement of either the bar admission program or the student's articles, whichever is commenced earlier. The chief executive officer may extend the completion time for the bar admission program and the term of articles beyond 3 years in exceptional circumstances.

(b) serve, unless abridged by the chief executive officer, at least 52 weeks of full-time articles, or part-time articles which are equivalent to 52 weeks of full-time articles, as approved by the chief executive officer. Abridgments of more than four weeks may only be granted in exceptional circumstances.

(AM. 04/04; 05/07; 10/08; 05/11; 06/15; 05/20; 10/21)

Credit for articles in another Canadian jurisdiction
5-5(2) In determining the period of time that a student has served articles in Manitoba, the student may be credited, to a maximum of six months, for all the time served by the student articling or clerking in another Canadian jurisdiction.
(AM. 05/07; 10/08; 05/11)

Exemption for students who have completed the bar admission program in another Canadian jurisdiction
5-5(3) The chief executive officer may allow an articling student who has completed the bar admission program of another Canadian jurisdiction to complete qualification assessments or examinations in lieu of completing all or a portion of the bar admission program in Manitoba. (AM. 04/04; 05/07; 10/07; 10/08; 05/11)

Practice experience in a foreign jurisdiction
5-5(4) An articling student or applicant for admission who has practising experience as a member of the legal profession in a foreign jurisdiction may apply to the chief executive officer for an exemption from completing all or a portion of the term of articles set out in subsection (1) by filing the required application and furnishing all documentation required by the chief executive officer. (ENACTED 05/11) (AM. 05/20)

Authority of chief executive officer
5-5(5) In considering a request under subsection (4), the chief executive officer may refuse the exemption or allow it in full or in part, with or without conditions or restrictions. (ENACTED 05/11)

Eligibility to act as a principal

5-6(1) To be eligible to act as a principal, an applicant must:

(a) be a practising lawyer;

(b) have carried on active practice in Manitoba for not less than three years immediately preceding becoming a principal or for less than three years if approved by the chief executive officer

(c) meet the criteria for principals established by the society; and

(d) file the required application.

(AM. 05/07; 10/07)

Approval of principal

5-6(2) The chief executive officer may approve an applicant to act as a principal with or without conditions or refuse an application to act as a principal and may withdraw the approval granted at any time. (AM. 04/04; 05/07; 10/07; 05/20)

Approved principal or delegate must offer articling position

5-6(3) Only a member who has been approved by the chief executive officer to act as a principal under subsection (2) or the principal's delegate may offer an articling position to a student and where rule 5-6.1 applies, the principal's delegate must comply with the process set out in rule 5-6.1(2). (ENACTED 06/09)

Limit on number of students

5-6(3.3) An approved principal may not act as a principal to more than one articling student at a time without the prior approval of the chief executive officer. (ENACTED 05/20)

Termination before call

5-6(4) An articling student who has completed his or her term of articles under rule 5-5(1) may terminate the articling agreement before being called to the bar provided that prior written notice is given to the chief executive officer. (AM. 05/07; 06/09)

Application

5-6.1(1) For purposes of this rule, City of Winnipeg means the part of the City that is bounded by the highway commonly known as the Perimeter Highway. (ENACTED 06/09) (AM. 05/20)

Recruitment of articling students in Winnipeg

5-6.1(2) The following process shall govern the recruitment of articling students in Winnipeg:

(a) a principal may only offer an articling position to a student who has, at a minimum, commenced his or her second year of law studies;

(b) the chief executive officer must designate the date and time when a principal may communicate an offer of an articling position to a student and the earliest date and time by which the student must accept the offer;

(c) an offer of an articling position made by a principal must remain open until the acceptance date and time designated by the chief executive officer under sub-paragraph (b) or any extended period permitted by the principal; and

(d) after the deadline to accept an offer has passed, a principal may offer an articling position to any student who has not yet accepted an offer of articles provided the student has, at a minimum, commenced his or her second year of law studies.

(ENACTED 06/09)

Permission to withdraw from agreement to article in Manitoba

5-6.2 Once an offer to article at a firm in Manitoba has been accepted by a student, neither the offeror nor the student may withdraw from the agreement without the permission of the chief executive officer. (ENACTED 06/09)

Temporary assignment of student

5-7 A principal may permit an articling student to attend in the office of another member who meets the criteria set out in rule 5-6(1), provided that prior written approval is received from the chief executive officer. (AM. 05/07; 05/20)

Practice by articling students

5-7.1 An articling student may practise law pursuant to section 21 of the Act in accordance with the terms of the Education Plan and Articling Agreement entered into between the articling student and his or her principal. (ENACTED 05/07)

Responsibility of principal

5-7.2 The principal of an articling student must comply with the terms of the Articling Agreement. (ENACTED 05/07)

Designation of articling student

5-8 During the term of articles, an articling student must be publicly designated as an "articling student-at-law", and this designation may be used on business cards and under the articling student's signature. (AM. 05/07)

Mandatory student participation

5-9(1) An articling student must attend all lectures, seminars, activities and examinations of the bar admission program, and this includes on-line participation in program activities, assignments, competency evaluations and examinations, unless excused from doing so by the chief executive officer of the bar admission program.
(ENACTED 04/04) (AM. 05/07; 05/20)

Principal to allow participation

5-9(2) A principal must permit an articling student to attend or participate in the activities set out in subsection (1). (AM. 04/04; 05/07)

Grades

5-10(1) Repealed (05/20)

Academic Misconduct
5-10(1.1) Repealed (05/20)

Discipline for Breaches of Integrity
5-10(1.2) The chief executive officer may discipline an articling student who engages in academic misconduct in the bar admission program. (ENACTED 09/17) (AM. 05/20)

Termination of Articles for Expelled Students
5-10(1.3) The chief executive officer may terminate the articles of an articling student who has been expelled from the bar admission program. (ENACTED 09/17) (AM. 05/20)

Successful completion of CPLED program
5-10(2) Repealed (05/20)

Supplemental competency evaluations and examinations
5-10(3) Repealed (05/20)

Passing grade for supplemental competency evaluations and examinations
5-10(4) Repealed (05/20)

Result final
5-10(5) Repealed (05/20)

Appeal
5-11(1) An articling student whose articles are terminated under rule 5-10(1.3) may appeal the termination to the committee within 14 days of being advised of the termination and of the right to appeal. (AM. 04/04; 05/07; 10/07, 09/17; 05/20)

Stay of Proceedings
5-11(1.1) Subject to subrule 1.2, at the written request of the articling student, the chief executive officer shall stay a decision to terminate an articling student's articles for a period of 30 days pending the determination of an appeal under rule 5-11(1) or for such longer period as the chief executive officer considers just in the circumstances. (ENACTED 09/17) (AM. 05/20)

Reasonable Dispatch Required
5-11(1.2) If an articling student fails to pursue with reasonable dispatch an appeal under subrule (1.1), the chief executive officer may terminate a stay of a decision upon providing 14 days notice to the articling student. (ENACTED 09/17) (AM. 05/20)

Hearings
5-11(2) A panel of the appeals sub-committee may hold a hearing to consider an appeal under subsection (1) or to consider a matter referred to it by the chief executive officer. The decision of the panel is final. (AM. 04/04; 05/07; 05/12)

Transition Rules - CPLED Legacy Program

Definitions

5-11(3) In this rule,

"appeals sub-committee" means the sub-committee of the admissions and education committee responsible for considering appeals of grades, findings of academic misconduct and admissions decisions made pursuant to the rules in this division; (ENACTED 05/20)

"CPLED legacy program" means the society's bar admission program in effect from August 2019 to June 2020; (ENACTED 05/20)

Application of Rules

5-11(3.1) This rule applies only to articling students who are enrolled in the CPLED legacy program. (ENACTED 05/20)

Grades

5-11(3.2) An articling student must receive a grade of competency demonstrated, competency not yet demonstrated, deferred or incomplete on competency evaluations, assignments and examinations. (ENACTED 05/20)

Academic Misconduct

5-11(3.3) An articling student who breaches the CPLED legacy program's professional integrity policy in respect of a competency evaluation, assignment or examination will receive a grade of competency not yet demonstrated on that competency evaluation, assignment or examination. (ENACTED 05/20)

Additional Sanctions

5-11(3.4) In addition to assigning a grade of competency not yet demonstrated under rule 5-11(3.3), the chief executive officer may reprimand, suspend, expel from the CPLED legacy program or otherwise discipline an articling student who breaches the CPLED professional integrity policy. (ENACTED 05/20)

Successful completion of CPLED legacy program

5-11(3.5) Subject to rule 5-5(3) and subsection (4), an articling student will have successfully completed the CPLED legacy program if he or she receives a grade of competency demonstrated on all competency evaluations and examinations.
(ENACTED 05/20)

Supplemental competency evaluations and examinations

5-11(3.6) An articling student who fails to receive a grade of competency demonstrated on a competency evaluation or examination may complete a maximum of three supplemental competency evaluations or examinations. A student who exceeds the maximum number of competency evaluations or examinations must enroll in and complete the new bar admission program. (ENACTED 05/20)

Passing grade for supplemental competency evaluations and examinations

5-11(3.7) In order to pass a supplemental competency evaluation or examination, an

articling student must receive a grade of competency demonstrated. (ENACTED 05/20)

Result final
5-11(3.8) Subject to rule 5-11(1), the result of a supplemental competency evaluation or examination is final. (ENACTED 05/20)

Appeal of grades
5-11(3.9) An articling student who:

(a) receives a grade of competency not yet demonstrated on a supplemental competency evaluation or supplemental examination; or

(b) is found to have breached the CPLED legacy program's professional integrity policy

may appeal the grade or the finding to the committee within 14 days of being issued the grade or the finding and being advised of the right to appeal.
(ENACTED 05/20)

Stay of Proceedings
5-11(3.10) Subject to rule 5.1-12, at the written request of the articling student, the chief executive officer shall stay a decision to suspend or expel the articling student from the CPLED legacy program or a decision to terminate an articling student's articles for a period of 30 days pending the determination of an appeal under rule 5.1-10 or for such longer period as the chief executive officer considers just in the circumstances. (ENACTED 05/20)

Reasonable Dispatch Required
5-11(3.11) If an articling student fails to pursue with reasonable dispatch an appeal under rule 5.1-11, the chief executive officer may terminate a stay of a decision upon providing 14 days notice to the articling student. (ENACTED 05/20)

Hearings
5-11(3.12) A panel of the appeals sub-committee may hold a hearing to consider an appeal under rule 5.1-10 or to consider a matter referred to it by the chief executive officer. The decision of the panel is final. (ENACTED 05/20)

Repetition of Bar Admission Program
5-11(3.13) An articling student who does not successfully complete the CPLED legacy program may apply to the chief executive officer for permission to participate in the new bar admission program, but is only eligible to participate in the CPLED legacy program and the new bar admission program a total of two times. (ENACTED 05/20)

Criteria for successful completion
5-12(1) An articling student is eligible for call to the bar if he or she:

(a) has completed the term of articles under rule 5-5(1);

(b) has obtained a satisfactory certification from his or her principal;

(c) has successfully completed the bar admission program;

(d) continues to be of good moral character and a fit and proper person to be called to the bar; and

(e) has paid the required fees.

(AM. 04/04; 05/07; 10/07; 04/13; 05/20)

Certificate of qualification required

5-12(2) Repealed (05/20)

Repetition of CPLED program

5-13 Repealed (05/20)

Presentation to court

5-13(1) Following the approval of an application for call to the bar:

(a) the applicant must be presented to the Court of Queen's Bench by a bencher or the chief executive officer at a date and time determined by the chief executive officer;

(b) the presentation must take place at a sitting of the Court of Queen's Bench; and

(c) the applicant must sign the rolls.

(AM. 05/20)

5-13(2) In exceptional circumstances, the chief executive officer may waive or vary the formal requirements of 5-13(1). (ENACTED 10/20)

Conditional practising certificate

5-14 The chief executive officer may refuse to issue a practising certificate to an applicant for call to the bar or may impose conditions or restrictions on the practising certificate of the applicant. (AM. 04/04; 05/07; 10/07; 05/12)

Admission of Law Students

Registration of law students

5-15(1) A person may be registered in the society's student register as a law student if the person:

(a) provides proof of enrolment in a law degree program;

(b) is approved by the chief executive officer to practise law under the control, supervision and authority of a practising lawyer;

(c) files the required application;

(d) furnishes all documentation required by the chief executive officer; and

(e) pays any required fee.

(AM. 05/07; 10/07; 10/08)

Term of registration

5-15(2) Subject to rule 5-16(1), any registration granted under subsection (1) must be for a period of not more than one year. A law student may apply to renew his or her registration prior to its expiry. (AM. 05/07)

Withdrawal of approval to practice

5-16(1) The chief executive officer may withdraw the registration granted under rule 5-15(1) at any time. (ENACTED 05/07) (AM. 10/07)

Practice by law students

5-16(2) A law student may practise law pursuant to section 21 of the Act under the supervision of a practising lawyer. (AM. 05/07)

Practice by NCA students

5-16(3) A person who is registered to take or awaiting the results of examinations or courses prescribed by the NCA has the same rights as a law student under rule 5-16(2), and may be registered in the society's student register if he or she complies with rule 5-15(1)(b),(c),(d) and (e) . An NCA student is also bound by rules 5-15(2) and 5-16(1). (ENACTED 04/13)

Admission on Exceptional Merit

(AM. 10/10)

Admission on exceptional merit

5-17(1) The chief executive officer may approve an applicant to be called to the bar in Manitoba if he or she demonstrates qualifications of exceptional merit and distinction and provides proof that he or she:

(a) has a bachelor of laws degree, juris doctor degree or graduate law degree from a faculty of common law at a Canadian university (a "Canadian common law degree"), or

(b) is the recipient of a certificate of qualification from the NCA, or

(c) is a member in good standing of the legal profession in a jurisdiction outside of Canada, in which the applicant is entitled to practice law,

and

(d) files a certificate of standing or its equivalent, issued by each governing body of the legal profession in another province or territory of Canada or outside of Canada of which the applicant is a member and dated not more than 30 days before the date of the application,

(e) provides proof that he or she is of good character and a fit and proper person

to be admitted,

(f) certifies in a prescribed form that he or she has reviewed and understands all materials that the chief executive officer requires the applicant to read,

(g) furnishes all documentation required by the chief executive officer, and pays any required fees.

(AM. 05/07; 10/07; 04/09; 05/20)

Conditions
5-17(2) The chief executive officer may approve an applicant under subsection (1) to be called to the bar in Manitoba with or without conditions. (ENACTED 04/09)

Example
5-17(3) An individual commencing his or her third consecutive year as a fulltime member of the Faculty of Law at the University of Manitoba may apply to be called to the bar under this rule. (ENACTED 04/09)

Admission of law school faculty
5-18 Repealed (04/09)

Presentation to court
5-19 Repealed (10/10)

Former superior court judge
5-20 Repealed (10/10)

Former provincial judge
5-21 Repealed (10/10)

Part-time judge
5-22 Repealed (10/10)

Former part-time judge
5-23 Repealed (10/10)

Application to chief executive officer
5-23.1 Repealed (10/10)

Transfer from Another Canadian Jurisdiction

Transfer application
5-24(1) In this rule,

"certificate of standing" means a certificate issued by the governing body of the legal profession in another province or territory of Canada and dated not more than 30 days before the date of the lawyer's application for call. (AM. 12/09)

"pre-call training period" for a call to the bar in a jurisdiction, means the total time normally

required for an articling student to complete the bar admission program and articles for that purpose. (AM. 05/07)

Requirements for call

5-24(2) A lawyer who is a member of the governing body of the legal profession in another province or territory of Canada (referred to in this rule as the "applicant's home jurisdiction") may be called to the bar upon:

(a) filing a formal application for call;

(b) filing a certificate of standing from each governing body of the legal profession in another province or territory of Canada of which the applicant is a member;

(c) providing proof of the applicant's good moral character and repute and fitness to become a member;

(d) presenting such further evidence as may be required;

(e) passing such assessments or examinations on substantive law, practice and procedure in Manitoba as may be prescribed by the chief executive officer, unless the applicant is exempt under rule 5-27.1;

(f) paying the required fee; and

(g) fulfilling all other requirements that the chief executive officer may consider appropriate.

(AM. 05/07; 10/07; 10/08; 12/09; 10/10)

In-House counsel

5-25(1) An applicant who does not qualify for transfer under rule 5-27.1 and who fulfills the requirements set out in clauses (a) through (d) and (g) of rule 5-24(2) may apply to be called to the bar in Manitoba as in-house counsel and the chief executive officer may exempt an applicant from the requirement to write and pass the assessment or examination referred to in clause (e) of rule 5-24(2) provided the applicant certifies in a prescribed form that he or she has reviewed and understands all of the materials reasonably required to be read by the applicant. (AM. 05/07; 10/07; 10/08; 10/10)

Restrictions on practice of in-house counsel

5-25(2) An applicant who is called to the bar as in-house counsel:

(a) is entitled to practise law in Manitoba only on behalf of his or her employer or one of its subdivisions or affiliates;

(b) must carry professional liability insurance which extends to his or her practice of law in Manitoba and is reasonably comparable in coverage and amount to that maintained by the society;

(c) must provide the society with a certificate of insurance evidencing the insurance coverage referred to in clause (b);

(d) must pay the required call fee and the fee necessary to receive an annual practising certificate; and

(e) may be relieved of the restriction imposed in clause (a) by writing and passing the assessment or examination required under clause (e) of rule 5-24(2).

(AM. 05/07; 10/07; 10/08)

Where no common law degree

5-26 Notwithstanding any other provision in this division, an applicant who does not have a bachelor of laws degree or juris doctor degree from a faculty of common law at a Canadian university (a "Canadian common law degree") or an equivalent qualification must fulfill such additional requirements as the chief executive officer may prescribe, including passing assessments or examinations in common law principles and in the substantive law, practice and procedure in Manitoba. (AM. 05/07; 10/07; 10/08; 10/10)

Further articling

5-27 Repealed (12/22)

Transfer under Mobility Agreement

5-27.1(1) This rule applies to an applicant for transfer from another Canadian jurisdiction who is:

(a) a member of a reciprocating governing body as defined in rule 3-61, or

(b) a member of a governing body that is a signatory to the Territorial Mobility Agreement, or

(c) a member of the Barreau du Quebec who has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau du Quebec,

and who is entitled to practise law in that jurisdiction and holds a valid practising certificate or its equivalent issued by the applicant's governing body. (ENACTED 10/10; AM 10/19)

Transfer examinations not required

5-27.1(2) An applicant under this rule must fulfill all the requirements in rule 5-24 for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examinations. (ENACTED 10/10)

Certification regarding reading materials

5-27.1(3) To qualify for call and admission, an applicant under this rule must certify in a prescribed form that he or she has reviewed and understands all the materials reasonably required by the chief executive officer. (ENACTED 10/10)

Applicant has no greater rights

5-27.1(4) A lawyer called and admitted under this rule has no greater rights as a member of the society than:

(a) a lawyer has as a member of the governing body of his or her home

jurisdiction; or

(b) any other member of the society in similar circumstances.

(ENACTED 10/10)

Transfer as Canadian legal advisor

5-27.2(1) Subject to subsection (2), a member of the Barreau du Quebec or the Chambre des notaires du Quebec may be called and admitted on transfer as a Canadian legal advisor upon:

(a) filing a formal application for call and admission as a Canadian legal adviser;

(b) filing a certificate of standing from all Canadian and foreign governing bodies of the legal profession of which the applicant is or has been a member;

(c) providing proof of the applicant's good moral character and repute and fitness to become a member;

(d) paying the required fees;

(e) fulfilling all other requirements that the chief executive officer may consider appropriate.

(ENACTED 10/10) (AM. 10/11)

Canadian legal advisor must have civil law degree

5-27.2(2) This rule does not apply to a member of the Barreau du Quebec or the Chambre des notaires du Quebec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau du Quebec or the Chambre des notaires du Quebec. (ENACTED 10/10) (AM. 10/11)

Scope of practice – Members of Barreau du Quebec

5-27.2(3) A Canadian legal advisor who is a member of the Barreau du Quebec

(a) may give legal advice on

(i) the law of Quebec and matters involving the law of Quebec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law,

(b) may draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

(c) may appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction,

(d) must not engage in the practice of law except as permitted under this subsection, and

(e) must undertake to comply with this rule.

(ENACTED 10/10) (AM. 10/11)

Scope of practice – Members of Chambre des notaires du Quebec

5-27.2(4) A Canadian legal advisor who is a member of the Chambre des notaires du Quebec

(a) may give legal advice on

(i) the law of Quebec and matters involving the law of Quebec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law,

(b) may draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, where expressly permitted by federal statute or regulation,

(c) may appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction where expressly permitted by federal statute or regulation,

(d) must not engage in the practice of law except as permitted under this subsection, and

(e) must undertake to comply with this rule.

(ENACTED 10/11)

Requirements

5-27.2(5) A Canadian legal advisor must

(a) be a member in good standing of the Barreau du Quebec or the Chambre des notaires du Quebec authorized to practise law in Quebec, and

(b) immediately notify the chief executive officer in writing if he or she ceases to be authorized to practise law in Quebec.

(ENACTED 10/10) (AM. 10/11)

Compliance with Act and rules

5-27.2(6) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these rules and the code. (ENACTED 10/10) (AM. 10/11)

Marketing legal services

5-27.2(7) A Canadian legal advisor, when engaging in advertising or any other form of marketing activity in Manitoba must have his or her name followed by the title *"Canadian Legal Advisor*" and a reference that he or she is legally authorized to practise law in the province of Quebec. (ENACTED 10/10) (AM. 10/11)

Appeals

(ENACTED 10/10)

Appeal of admissions decisions

5-28(1) Subject to subsection (8), a decision of the chief executive officer made pursuant to the rules in this division may be appealed to the committee by the completion and filing of the required notice of appeal within 14 days of receipt of written confirmation of the decision and the right to appeal. The appeal process will be governed by guidelines adopted by the benchers. (ENACTED 10/07) (AM. 04/10; 05/12)

Appointment and composition of panel

5-28(2) The chairperson of the committee must select a panel of three members of the appeals sub-committee to consider any appeal made under subsection (1). One of the panel members must be a public representative. Two of the panel members must have current practising certificates, unless it is not reasonably practicable to have two practising members on the panel, in which case the chairperson may appoint one practising member and one non-practising member to sit on the panel. (ENACTED 10/07) (AM. 05/08; 05/12) (AM. 04/24)

Hearings

5-28(3) A panel must conduct an appeal based on a consideration of written submissions and other relevant materials, except where the chairperson of the committee directs or the appellant requests an oral hearing. During an oral hearing, neither the appellant nor any other person may give oral evidence, except with leave of the appeal panel and then only in such exceptional circumstances as the appeal panel may determine. The testimony of an appellant or any other person at an oral hearing must be taken under oath unless the chairperson of the panel waives the requirement. An oath must be administered by the chairperson of the panel. (ENACTED 05/08) (AM. 05/12; 05/14)

Hearing to be public

5-28(4) An oral hearing convened under sub-section (3) must be open to the public unless the panel makes an order under sub-section (5). (ENACTED 06/09)

Exclusion of members of public

5-28(5) A panel considering an appeal under sub-section (3) may make an order excluding members of the public from a hearing if it thinks that:

(a) exclusion is necessary to prevent the disclosure of information that is subject to solicitor-client privilege; or

(b) the public interest in the disclosure of other information is outweighed by the interest of the public or any person in preventing the information from being disclosed.

(ENACTED 06/09)

How and when order can be made

5-28(6) A panel may make an order under subsection (5) on its own motion, or on the

application of any person having an interest in the information to be disclosed. The order or application may be made before the hearing begins or at any time during the hearing. (ENACTED 06/09)

Decision of panel

5-28(7) The panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions. A decision of the panel is final, except a decision to refuse to issue a practising certificate or a practising certificate free of conditions, which decision may be appealed to the Court of Appeal pursuant to section 76 of the Act. (ENACTED 05/08; AM. 06/09; 05/12)

Exception

5-28(8) Where the chief executive officer does not grant a person's abridgement request under rule 5-28.1(3), the person may appeal in writing to the chair of the committee within 14 days of his or her receipt of written confirmation of the decision and the right to appeal. The decision of the chair is final. (ENACTED 04/10)

Application of rule

5-28.1(1) This rule applies to a person whose application:

(a) for admission to the CPLED program and as an articling student,

(b) for call to the bar, or

(c) to resume active practice,

has been refused because the person has not satisfied the chief executive officer or a panel of the appeals sub-committee that he or she is of good moral character and a fit and proper person to be admitted, called to the bar or to resume practice. (ENACTED 04/10) (AM. 05/12)

Waiting period

5-28.1(2) Subject to subsection (3), a person referred to in subsection (1) may not apply for admission, call or resumption for a period of two years after the later of:

(a) the date the chief executive officer refused his or her application, or

(b) the date a panel of the appeals sub-committee dismissed his or her appeal of the chief executive officer's decision to refuse the application.

(ENACTED 04/10) (AM. 05/12)

Abridgement

5-28.1(3) A person referred to in subsection (1) may submit a written request to the chief executive officer for permission to abridge the two year waiting period set out in subsection (2) and the chief executive officer may grant an abridgement request only if he or she is satisfied that there has been a material change in the person's circumstances.
(ENACTED 04/10)

Resumption of Active Practice

Resuming active practice

5-28.2 A member who is non-practising, or who has completed a period of suspension, must apply to resume active practice in Manitoba and the chief executive officer may issue a practicing certificate to a member, with or without conditions or restrictions, provided the member:

(a) provides proof that he or she is of good moral character and a fit and proper person to practise;

(b) passes such assessments or examinations and fulfills such requirements as may be prescribed by the chief executive officer;

(c) pays the annual practising fee and required contributions; and

(d) pays to the society all money owing by the member to the society.

(AM. 05/07; 10/07; 10/08; 05/10; 02/13) (AM. 04/24)

Former superior court judge

5-28.3 Subject to rule 5-28.7, a former judge of a superior court in Manitoba who is granted the privilege of resuming the active practice of law must not appear as counsel in the court of which he or she was a member or in any court inferior to that court, for a period of three years after he or she ceases to be a judge of that court. (ENACTED 10/10)

Former provincial judge

5-28.4 Subject to rule 5-28.7, a former judge of the Provincial Court in Manitoba who is granted the privilege of resuming the active practice of law must not appear as counsel in that court for a period of three years after he or she ceases to be a judge of that court. (ENACTED 10/10)

Part-time judge

5-28.5 A member who is a part-time judge of the Provincial Court in Manitoba must not appear as counsel in the Provincial Court. (ENACTED 10/10)

Former part-time judge

5-28.6 Subject to rule 5-28.7, a former part-time judge of the Provincial Court in Manitoba must not appear as counsel in the Provincial Court for a period of one year after he or she ceases to be a part-time judge of that court. (ENACTED 10/10)

Application to chief executive officer

5-28.7 A former judge may apply to the chief executive officer to reduce the time period during which the judge is prohibited from appearing as counsel in court. The chief executive officer may approve an application only in exceptional circumstances and may restrict the approval as he or she sees fit. (ENACTED 10/10)

Division 2 - Professional Liability Claims Fund

Definitions
5-29 In this part

"member" means a lawyer who holds a valid practising certificate issued by the society, but does not include a member who is not required to contribute to the professional liability claims fund under subsection 19(3) of the Act or rule 5-30(3); (AM. 10/07)

"annual contribution" means the amount a member must contribute each year to the professional liability claims fund.

Annual contribution
5-30(1) Each member must pay an annual contribution for the purpose of maintaining the professional liability claims fund.

Exemption
5-30(2) A practising lawyer who is not required to contribute to the professional liability claims fund under subsection 19(3) of the Act or under subsections (3) or (4) must complete and file an application for exemption from paying the contribution required under subsection (1). (AM. 05/07; 10/10)

Lawyers called to the bar in more than one jurisdiction
5-30(3) A lawyer may apply to the chief executive office for exemption from the requirement to contribute to the professional liability claims fund if he or she is a practising lawyer and resident in another Canadian jurisdiction and:

(a) the governing body in that jurisdiction allows a similar exemption for members of the society; and

(b) the lawyer maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of Manitoba lawyers and that coverage extends to his or her practice in Manitoba.

(ENACTED 05/07) (AM. 10/07)

Exemption for Canadian legal advisor
5-30(4) A Canadian legal advisor may apply to the chief executive officer for exemption from the requirement to contribute to the professional liability claims fund if he or she is a member in good standing of the Barreau du Quebec or the Chambre des notaires du Quebec authorized to practise law in Quebec and maintains the full mandatory professional liability insurance coverage required by the Barreau du Quebec or the Chambre des notaires du Quebec that extends to the Canadian legal advisor's practice in Manitoba. (ENACTED 10/10) (AM. 10/11)

Surcharge
5-31 The annual contribution may include a surcharge to certain members or classes of members based on their paid claims record, the nature of a paid claim, or both.

Unpaid deductible

5-32 A member's annual contribution must include the amount of any deductible owed by the member where:

(a) the deductible or any part of it is unpaid as of May 1st, and

(b) the member:

(i) has not made satisfactory arrangements with the chief executive officer for payment of the outstanding amount, or

(ii) has breached an agreement made with the chief executive officer respecting payment of the deductible.

Lawyers who do not contribute to the fund

5-33 The professional liability claims fund shall not respond to any claim made against a practising lawyer who is not required to contribute to the fund under subsection 19(3) of the Act or rule 5-30(3). A practising lawyer who ceases to qualify for the exemption under subsection 19(3) of the Act or rule 5-30(3) must immediately notify the chief executive officer of his or her change in circumstances and pay the applicable portion of the annual contribution. (AM. 10/07)

Duty to notify insurer

5-34 A member, as soon as practicable after becoming aware of any acts or omissions that may give rise to a professional liability claim, must give notice of the potential claim to the chief executive officer.

Duty to co-operate

5-35 A member must co-operate with the society and any insurer as may be required under the provisions of the contract of group insurance.

Failure to comply with rules

5-36 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct.

Division 3 - Reimbursement Fund

Definitions

5-37(1) In this division:

"claim" means a written claim initiated by statutory declaration or such application as may be required by the society from time to time;

"committee" means the reimbursement fund claims committee appointed by the benchers;

"fund" means the reimbursement fund established under subsection 46(1) of the Act. (ENACTED 01/05)

Annual contribution
5-37(2) Subject to rule 5-37.1, each practising lawyer must pay an annual contribution for the purpose of maintaining the reimbursement fund. (AM. 01/05; 10/10)

Exemption for Canadian legal advisor
5-37.1 A Canadian legal advisor may apply to the chief executive officer for exemption from the requirement to contribute to the reimbursement fund if he or she is a member in good standing of the Barreau du Quebec or the Chambre des notaires du Quebec authorized to practise law in Quebec and maintains defalcation coverage with the Barreau du Quebec or the Chambre des notaires du Quebec that is comparable to the coverage and limits set out in the Mobility Defalcation Compensation Agreement of the Federation of Law Societies of Canada and that coverage extends to his or her practice as a Canadian legal advisor in Manitoba. (ENACTED 10/10) (AM. 10/11)

Authority of CEO
5-38(1) The chief executive officer must investigate all claims made against the fund and may pay a claim, in whole or in part, or may pay some claims and refuse to pay others in accordance with the claims payment guidelines adopted for use by the Benchers. Where the chief executive officer determines to pay a claim in part or refuses to pay a claim the claimant may appeal that decision to the committee. (AM. 01/05)

Authority of committee
5-38(2) The committee must consider any appeal made under subsection (1) and either confirm or vary the decision of the chief executive officer. The committee may also pay claims, in whole or in part, or pay some claims and refuse to pay others in accordance with the claims payment guidelines adopted for use by the benchers. (ENACTED 01/05)

Report to benchers
5-39 The chief executive officer must report the disposition of any claim for reimbursement to the benchers. (AM. 01/05)

Authority of benchers
5-40 Where the chief executive officer or the committee is of the view that circumstances warrant payment of a claim in excess of the amount that would be payable under the claims payment guidelines they must report their recommendations to the benchers. The benchers must determine the disposition of the claim and may pay the claim in whole or in part, refuse to pay the claim or dispose of the claim in any manner they consider proper. (AM. 01/05)

Division 4 - Financial Accountability

Definitions
5-41 In this division,

"accountant" means

(a) a person who is a member in good standing of the Chartered Professional

Accountants of Manitoba, and who is in public practice,

(b) another person approved by the chief executive officer;
(AM. 12/15)

"books of original entry" means a book or books recording in chronological order the full details of all payments from trust, all transfers between individual client trust ledgers, all trust receipts and the form in which the trust money is received. (AM. 06/05; 12/18)

"cash" means current coins within the meaning of The Currency Act, notes intended for circulation in Canada issued by the Bank of Canada pursuant to The Bank of Canada Act and current coins or bank notes of countries other than Canada. (ENACTED 06/05)

"client trust ledger" means a separate record maintained for each client and matter, recording in chronological order, the full details of all trust transactions for that client, and the balance in the client's account;

"disbursements" means amounts paid or required to be paid to a third party by a member or law firm on a client's behalf in connection with the provision of legal services to the client by the member or law firm which will be reimbursed by the client; (ENACTED 12/19)

"electronic funds transfer" or "**EFT**" means an online banking service through a savings institution that includes various forms of electronic payments such as electronic wire transfers, Interac e-transfers, bill payments and account to account transfers.
(ENACTED 11/25)

"expenses" means costs incurred by a member or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage and paralegal costs; (ENACTED 12/19)

"financial institution" means

(a) a bank that is regulated by the *Bank Act,*

(b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,

(c) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,

(d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),

(e) a financial services cooperative,

(f) a credit union central,

(g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),

(h) a trust company or loan company that is regulated by a provincial or territorial Act,

(i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or

(j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution;

(ENACTED 12/19)

"financial services cooperative" means a financial services cooperative that is regulated by *an Act respecting financial services cooperatives,* CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c. 77, other than a caisse populaire; (ENACTED 12/19)

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or right to or interest in them. (ENACTED 06/05) (AM. 12/19)

"fiduciary property" means money, other than trust money, and valuables for which a member is responsible in a representative capacity or as a trustee but not as a lawyer; (ENACTED 09/17) (AM. 12/18)

"investigator" means a person designated to investigate, inspect or audit the accounts, books and records of a member or law firm; (AM. 12/19)

"member" Repealed (12/18)

"money" includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders and electronic transfer of deposits at financial institutions; (ENACTED 06/05) (AM. 12/19)

"monthly trust reconciliation" means a comparison prepared each month by the member or law firm showing the reasons for any differences between the books of original entry, the client trust ledgers and the bank's records; (AM. 12/19)

"**multi-factor authentication**" is an electronic authentication method in which a user is granted access to a website or application only after successfully presenting multiple pieces of evidence (or factors) to an authentication mechanism. (ENACTED 11/25)

"pooled trust account" means an interest-bearing chequing account opened at a savings institution by a member for the benefit of a number of clients;

"professional fees" means amounts billed or to be billed to a client for legal services provided or to be provided to the client by a member or law firm; (ENACTED 12/19)

"public body" means:

(a) a department or agent of Her Majesty in Right of Canada or of a province or territory,

(b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or

an agent in Canada of any of them,

(c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in *The Municipal Act* or similar body incorporated under the law of another province or territory,

(d) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,

(e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose, or

(f) a subsidiary of a public body whose financial statements are consolidated with those of the public body;

(ENACTED 06/05) (AM. 12/19)

"restricted trust account" means a pooled trust account used only for the purpose of transferring funds electronically to Teranet Manitoba LP on account of land transfer tax and registration fees on real property transactions. (ENACTED 09/17)

"savings institution" means a Manitoba branch of:

(a) a chartered bank or a trust company that is authorized by law to receive money on deposit and is insured by the Canada Deposit Insurance Corporation,

(b) or a credit union or caisse populaire incorporated under The Credit Unions and Caisses Populaires Act;

(AM. 02/13)

"specific trust investment account" means a separate interest-bearing account opened by a member or law firm in trust for a specific client at a savings institution, and is limited to a daily interest savings account, a term deposit or a guaranteed investment certificate; (AM. 12/19)

"trust account supervisor" means a practising member who has been approved to operate a trust bank account; (ENACTED 12/18)

"trust bank account" means a pooled trust account or a specific trust investment account as defined herein;

"trust money" means

(a) all money received by a member or law firm in connection with the legal practice that

(i) belongs in whole or in part to a client; or

(ii) is received on a client's behalf or to the direction or order of a client, or

(b) money received by a member or law firm on account of professional fees for services not yet rendered or on account of disbursements or expenses not yet paid, or for which a statement of account has not been rendered; (AM. 12/19)

"trust safety appeals committee" means the committee responsible for considering appeals of decisions to deny or to approve with conditions a member's application to become a trust account supervisor and appeals of decisions to revoke a member's status as a trust account supervisor. (ENACTED 12/18)

"trust year end" Repealed (12/18)

"valuable property" means anything of value, other than trust money, that can be negotiated or transferred by a member or law firm. (AM. 12/19)

Trust Account Supervisor

5-42(1) Effective April 1, 2019, a member or a law firm shall, before opening a pooled trust account obtain, and at all times thereafter maintain, the approval of the chief executive officer to:

(a) operate a trust bank account; and

(b) designate a member as the trust account supervisor.

(ENACTED 12/18)

Transition for Current Account Holders

5-42(2) All members and law firms that have an open pooled trust account on March 31, 2019, must apply on or before April 1, 2019, to the chief executive officer to:

(a) continue to operate a trust bank account; and

(b) designate a member as the trust account supervisor.

(ENACTED 12/18)

Members who share space

5-42(3) Subject to the approvals required in rules 5-42(1) and (2), where a member who receives trust money participates in an arrangement with other members to share space and certain common expenses but otherwise practises as an independent practitioner:

(a) the member must open his or her own trust account, in his or her own name; and

(b) the member must not deposit trust money into a trust account opened by any other member or law firm.

(AM. 12/18; AM. 12/19)

Trust Account Supervisor Responsibility

5-42.1(1) The trust account supervisor is responsible for:

(a) The controls in relation to the operation of all law firm trust bank accounts and

general accounts;

(b) The accuracy of the law firm's reporting requirements;

(c) The timeliness and accuracy of the law firm's record keeping requirements;

(d) Any of subrule (a), (b) or (c) that has been delegated to another person.
(ENACTED 12/18)

Notification regarding new accounts
5-42.1(2) A member or law firm with an approved trust account supervisor may open a new pooled trust account provided that, within 30 days of opening the account, the trust account supervisor notifies the chief executive officer in writing of the existence of the account, the date on which the account was opened, the account number, the name and branch of the savings institution. (AM. 12/18)

Notice of Withdrawal
5-42.1(3) A trust account supervisor who intends to withdraw from acting in that capacity must provide thirty days written notice to the chief executive officer and to the law firm. (ENACTED 12/18)

Closure of Trust Accounts
5-42.1(4) If within thirty days of receipt of a notice under subrule (3), the law firm does not obtain the approval of the chief executive officer to continue to operate a trust bank account and to designate a member as the trust account supervisor, thereafter:

(a) the law firm shall not accept any new matters where the law firm will be required to handle trust money; and

(b) the law firm must close all trust bank accounts within 60 days

unless and until a new trust account supervisor is approved.
(ENACTED 12/18)

Trust Account Supervisor Eligibility
5-42.2(1) To be eligible to act as a trust account supervisor, an applicant must:

(a) be a practising member;

(b) meet the criteria for trust account supervisors established by the Law Society;

(c) file the required application; and

(d) remit the application fee.
(ENACTED 12/18)

Authority of Chief Executive Officer
5-42.2(2) The chief executive officer may;

(a) approve an application, with or without conditions;

(b) deny an application; or

(c) revoke an individual's approval to be a trust account supervisor.

(ENACTED 12/18)

Recovery of Expenses on Conditional Approval

5-42.2(3) Where the chief executive officer approves an application with conditions, the society is entitled to recover from the member who has been conditionally approved or from the law firm any expense incurred by the society in monitoring the member's compliance with the conditions. (ENACTED 12/18)

Written Notice by Chief Executive Officer

5-42.2(4) Where the chief executive officer revokes a member's status as a trust account supervisor, approves with conditions or denies an application made pursuant to rule 5-42.2(2), the chief executive officer must provide written notice to the member and to the law firm. (ENACTED 12/18) (AM. 12/19)

Closure of Trust Accounts

5-42.2(5) Upon receipt of a notice of revocation or denial under subrule (4):

(a) the law firm must not accept any new matters where the law firm will be required to handle trust money; and

(b) the law firm must close all trust bank accounts within 60 days

unless and until a new trust account supervisor is approved. (ENACTED 12/18)

Custodial Order

5-42.2(6) If under rule 5-42.1(4) or 5-42.2(5), a new trust account supervisor has not been approved and if all trust bank accounts have not been closed within 60 days, the society may apply to the Court of Queen's Bench for an order appointing a custodian of the trust bank accounts pursuant to s. 57 of *The Legal Profession Act*. (ENACTED 12/18)

Appeal

5-42.3(1) A decision of the chief executive officer to deny, approve with conditions or revoke a member's approval as a trust account supervisor may be appealed to the trust safety appeal committee by filing the required notice of appeal within 14 days of receipt of the written decision and notification of the right of appeal. The appeal process will be governed by guidelines adopted by the benchers. (ENACTED 12/18) (AM. 05/19)

Appeal Panel

5-42.3(2) The chairperson of the committee must select a panel of three members of the committee to consider any appeal made under subsection (1). One of the panel members must be a public representative. Two of the panel members must have current practising certificates, unless it is not reasonably practicable to have two practising members on the panel, in which case the chairperson may appoint one practising member and one non-practising member to sit on the panel. (ENACTED 12/18) (AM. 04/24)

Hearing

5-42.3(3) A panel must conduct an appeal based on a consideration of written submissions and other relevant materials, except where the chairperson of the committee directs or the appellant requests an oral hearing. During an oral hearing neither the appellant nor any other person may give oral evidence, except with leave of the appeal panel and then only in such exceptional circumstances as the appeal panel may determine. The testimony of an appellant or any other person at an oral hearing must be taken under oath unless the chairperson of the panel waives the requirement. An oath must be administered by the chairperson of the panel. (ENACTED 12/18)

Decision Final

5-42.3(4) The panel may dismiss the appeal, make any decision the chief executive officer could have made, or allow the appeal with or without conditions. A decision of the panel is final. (ENACTED 12/18)

Trust Records

5-43(1) A member or law firm must maintain up-to-date trust records and supporting documentation for all pooled trust accounts, restricted trust accounts and specific trust investment accounts. The trust records must include:

(a) a book or books of original entry; and

(b) a client trust ledger for each client and each legal matter.

(AM. 09/17; 12/18)

Monthly trust reconciliations

5-43(2) A member or law firm must produce a monthly trust reconciliation, for all pooled, restricted and specific trust investment accounts, no later than the end of the following month, and include detailed reasons for any differences between:

(a) the amount of money held in the trust bank account according to the member's records;

(b) the total of the individual client trust ledgers; and

(c) the amount of money held in the trust bank account according to the bank's records.

(AM. 09/17; 12/18; 12/19)

Balances in clients' trust ledgers

5-43(3) The reconciliation in subsection (2) must be saved in a universally readable format or printed each month, and must be supported by a client list showing the balance of trust money held in each client's trust ledger. (AM. 12/18)

Record of valuable property

5-43(4) A member or law firm must maintain a record of all valuable property held in trust. (AM. 12/18)

Electronic trust records

5-43(5) Where a member or law firm maintains electronic records the member or law firm must:

(a) save in a universally readable format or print a copy of the books of original entry immediately after each month end;

(b) ensure that the system is capable of producing a printed copy of any individual client trust ledger, showing a full history of all trust transactions for that client;

(c) maintain a backup copy of the electronic records, which must be updated at least monthly, and stored in a secure manner in an off-site location; and

(d) save in a universally readable format or print a client's closed trust ledger before it is purged from the electronic file and store it in a central file maintained for purged ledgers. (AM. 12/18)

Hand posted trust records

5-43(6) Where a member or law firm maintains trust records that are entered and posted by hand, they shall be entered and posted in ink. (ENACTED 06/05) (AM. 12/18)

Trust records must be current

5-43(7) A member's or law firm's trust records must be entered and posted so as to be current at all times. (ENACTED 06/05) (AM. 12/18)

Handling of trust money

5-44(1) A member or law firm must

(a) pay into and withdraw from a trust account only trust money that is directly related to legal services that the member or law firm is providing;

(b) deposit or cause to be deposited all trust money into a pooled trust account as soon as practicable after receipt of the money;

(c) not withdraw money from a trust bank account to pay for the recovery of the member's or law firm's fees, disbursements or expenses unless a statement of account is prepared and sent or delivered to the client at the time the money is withdrawn;

(d) not overdraw a trust bank account;

(e) not overdraw any individual client's trust ledger account;

(f) not pay any of the member's personal or general office accounts from a trust bank account;

(g) at all times maintain sufficient balances on deposit in a trust bank account to meet all of the member's and law firm's obligations with respect to trust money;

(h) not make transfers of trust money from one client's account to another client's account unless the member or law firm has obtained either:

(i) the written authorization of the client from whose account the money is transferred; or

(ii) the verbal authorization of the client from whose account the money is transferred, which authorization is subsequently confirmed in writing to the client by the member;

(i) not retain any money other than trust money in a trust bank account;

(j) ensure that trust money is paid out expeditiously once a legal matter is concluded.

(AM. 06/05; 06/10; 05/15, 09/17; 12/18; 12/19; 11/25)

Withdrawals of trust money by cheque

5-44(2) A member or law firm must

(a) subject to rules 5-45(5)(d) and 5-47(3) make all withdrawals from a pooled trust account by consecutively numbered cheques drawn to the order of the person to whom the money is to be paid, unless otherwise authorized by the chief executive officer;

(b) ensure that all cheques drawn on a trust bank account are signed only by the member or another practising lawyer in the law firm or by those persons in conjunction with other employees of the law firm, unless otherwise authorized by the chief executive officer;

(c) not sign a trust cheque in blank or post-date a trust cheque.

(ENACTED 11/25)

Withdrawals of trust money by electronic funds transfer

5-44(3) If authorized by the chief executive officer, a member or law firm may make withdrawals from a pooled trust account by electronic funds transfer, provided that

(a) each withdrawal is evidenced by an electronic withdrawal requisition form containing full details necessary to document the transaction;

(b) each completed electronic withdrawal requisition form is approved by the member or another practising lawyer in the law firm;

(c) each law firm user accesses the EFT platform using

(i) a multi-factor authentication process; and

(ii) their own individual username and password;

(d) each withdrawal within the EFT platform is completed by a minimum of two law firm users, whereby;

(i) the first user initiates the withdrawal; and

(ii) the second user, who must be the member or another practising lawyer in the law firm, executes the withdrawal;

(e) by the following business day, the member or law firm receives confirmation of the withdrawal from the savings institution which includes the following details of the transaction:

(i) date of the withdrawal;

(ii) source trust account name and account number;

(iii) destination name and account number, savings institution, and address;

(iv) identity of the person initiating the withdrawal;

(v) identity of the member approving the withdrawal; and

(vi) amount of the withdrawal;

(f) upon receipt of the confirmation from the savings institution, the member or law firm compares the confirmation with the electronic withdrawal requisition form to ensure that the information in the documents is consistent with one another; and

(g) the member or law firm retains the electronic withdrawal requisition form and the confirmation with the client's file and accounting records.

(ENACTED 11/25)

Restriction on receipt of cash

5-45(1) A member or law firm must not receive or accept cash in an aggregate amount greater than $7,500.00 Canadian dollars in respect of any one client matter. (ENACTED 06/05) (AM. 12/18; AM. 12/19)

Recordkeeping for cash receipts

5-45(2) In addition to the recordkeeping requirements set out in rules 5-43(1) and 5-48(1), where the member or law firm receives cash for a client, the member's or law firm's records must also include a book of duplicate receipts, with each receipt identifying or containing:

(a) the date on which cash is received;

(b) the person from whom cash is received;

(c) the amount of cash received;

(d) the client for whom cash is received;

(e) any file number in respect of which the cash is received; and

(f) the signature of the member or a person authorized by the member who receives the cash and the signature of the person from whom the cash is received.

(ENACTED 06/05) (AM. 12/18)

Foreign currency conversion for cash

5-45(3) For the purposes of rule subsection (1), when a member or law firm receives or accepts cash in a foreign currency, the member or law firm will be deemed to have received or accepted the cash converted into Canadian dollars at:

(a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the member or law firm receives or accepts the cash; or

(b) if the day on which the member receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the member or law firm receives or accepts the cash.

(ENACTED 06/05) (AM. 12/18; AM. 12/19)

Application of cash restriction

5-45(4) Subsection (1) applies to a member or law firm engaged in any of the following activities on behalf of a client or giving instructions on behalf of a client in respect of the following activities:

(a) receiving or paying funds;

(b) purchasing or selling securities, real property or business assets or entities;

(c) transferring funds by any means.

(ENACTED 06/05) (AM. 12/18; AM. 12/19)

Exceptions to cash restriction

5-45(5) Despite subsection (4), subsection (1) does not apply when the member receives cash in connection with the provision of legal services by the member or law firm;

(a) from a financial institution or public body;

(b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;

(c) to pay a fine, penalty, or bail; or

(d) for professional fees, disbursements or expenses provided that any refund out of such receipts is also made in cash.

(ENACTED 06/05) (AM. 12/18; AM. 12/19)

Acknowledgement of cash refund required

5-45(6) When a member or law firm pays a cash refund under paragraph (d) of

subsection (5), the member or law firm must obtain a signed and dated acknowledgement of the payment from the person who receives the refund. (ENACTED 06/05) (AM. 12/18; AM. 12/19)

Change of trust year end date

5-46 Repealed (12/18)

Specific trust investment account

5-46(1) A member or law firm may, after first depositing trust money into a pooled trust account, subsequently withdraw the trust money or a portion of it and deposit it into a specific trust investment account, provided:

(a) the specific trust investment account is opened in the name of the member or law firm in trust for the person to whom the money belongs; and

(b) full details of the specific trust investments are recorded in the member's or law firm's trust records.

(AM. 12/18)

Removing funds from specific trust investments

5-46(2) When withdrawing funds from a specific trust investment account, a member or law firm must deposit all resulting trust money directly back into a pooled trust account. (AM. 12/18)

Restricted Trust Account

5-47(1) A member or law firm may, after first depositing trust money into a pooled trust account, subsequently withdraw the trust money or a portion of it and deposit it into a restricted trust account for the purpose of facilitating the registration of documents with Teranet Manitoba LP, provided that;

(a) the only funds deposited into the restricted trust account are for the payment of land transfer tax and registration fees at Teranet Manitoba LP; and

(b) no more funds are deposited than are required to pay the document registration fees and land transfer tax for a client's real property transaction.

(ENACTED 09/17) (AM. 12/18)

5-47(2) If more funds are deposited than are required for the registration fees and land transfer tax for a client's real property transaction, the excess funds shall be transferred forthwith by way of trust cheque into the pooled trust account from which they originated. (ENACTED 09/17) (AM. 12/18)

Withdrawal by Teranet Manitoba LP

5-47(3) A member or law firm may authorize Teranet Manitoba LP to withdraw from a restricted trust account trust money required to pay the document registration fees and the land transfer tax related to a client's real property transaction, provided that such authorization specifies:

(a) the amount of money to be withdrawn;

(b) the deposit account number;

(c) the firm name;

(d) the client file number; and

(e) registration details

and provided that Teranet Manitoba LP agrees to provide to the member or law firm confirmation of receipt of the authorization, containing the same information, not later than 6:00 p.m. on the day immediately after the day of which the member or law firm submitted the authorization. (ENACTED 09/17) (AM. 12/18; AM. 12/19)

Reconcile to Client File Report
5-47(4) Upon receipt of a client file report from Teranet Manitoba LP, the member or law firm shall compare the client file report with the member's or law firm's accounting records and reconcile and correct any discrepancies. (ENACTED 09/17) (AM. 12/18)

Suspension for failure to file
5-47(10) Repealed (12/18)

Exception to requirement to file annual trust account report
5-47(11) Repealed (12/18)

Exception for practising lawyers
5-47(12) Repealed (12/11)

General records and accounts
5-48(1) A member or law firm must deposit into a general account only money received in connection with the member's or law firm's practise of law that is not trust money. A member or law firm must maintain at least one general operating account and the following general books and records:

(a) a general book of original entry recording in chronological order the full details of all general money received and disbursed. These books must identify the form in which the money is received;

(b) an accounts receivable ledger or other suitable system that records for each client, the accounts rendered, payments made on account, and the balance owing to or from the client;

(c) all supporting records including bank statements, pass books, cancelled cheques, cash receipts, deposit slips, bank advices and similar documents and invoices.

(ENACTED 12/03) (AM. 06/05; 12/18)

Hand posted general records
5-48(2) Where a member or law firm maintains general records that are entered and posted by hand, they shall be entered and posted in ink. (ENACTED 06/05) (AM. 12/18)

General records must be current

5-48(3) A member's or law firm's general records must be entered and posted so as to be current at all times. (ENACTED 06/05) (AM. 12/18)

Acting in a Representative Capacity

5-49(1) A member is acting in a representative capacity if the member is not providing legal services and is:

(a) the personal representative, executor or administrator, or one of the personal representatives, executors or administrators, of the estate of a deceased person;

(b) a trustee, or one of the trustees, of a trust under an appointment made pursuant to a trust instrument creating the trust;

(c) a trustee, or one of the trustees, of the property of another person under an appointment by a court;

(d) a *de facto* trustee; or

(e) an attorney, or one of the attorneys, of a person under a power of attorney, whether general or special, enduring or otherwise whether or not the appointment arises from a solicitor and client relationship.

(ENACTED 09/17) (AM. 12/18; AM. 12/19)

Fiduciary Property in Trust Account

5-49(2) Repealed (12/19)

Fiduciary Property Not in Trust Account

5-49(3) Where a member is appointed to act in a representative capacity the member must:

(a) provide written notice to the chief executive officer that the member is acting in a representative capacity within 30 days of commencing to act in that capacity;

(b) maintain a record of all known appointments or assumptions of a representative capacity and a list of the beneficiaries of the estate or trust together with their last known address or contact information;

(c) maintain the books, records, accounts and documentation of the estate or trust in an organized and accessible manner so as to accommodate an examination, review, audit or investigation by the Society;

(d) cooperate with the Society's auditor or investigator in the conduct of any examination, review, audit or investigation.

(ENACTED 09/17) (AM. 12/18; AM. 12/19)

Appointment Outside Solicitor-Client Relationship

5-49(4) Where a member acts in a representative capacity that arises outside of the solicitor and client relationship, the member must provide notice in writing to the beneficiaries of the trust and where possible the party making the appointment that neither the Professional Liability Claims Fund nor the Reimbursement Fund will respond to a claim in relation to the member's handling of the fiduciary property. (ENACTED 09/17) (AM. 12/18)

Report on termination of practice

5-50(1) Where a member withdraws from the practice of law:

(a) as a sole practitioner or a law firm with which the member practises winds up its practice, the member or the law firm must file a final report no later than four months after all trust bank accounts have been closed, in the form prescribed by the chief executive officer.

(b) the member must provide written notice to all known persons for whom the member has been appointed to act in a representative capacity or for whose benefit the member is acting in a representative capacity of the member's withdrawal from practice and that neither the Professional Liability Claims Fund nor the Reimbursement Fund will respond to a claim in relation to the member's handling of the fiduciary property after the member's withdrawal from practice.

(AM. 09/17; 12/18)

Closure of trust accounts

5-50(2) A member or law firm must close all trust bank accounts within three months after withdrawal from or winding up of a practice, in accordance with rule 2-74(2).
(AM. 12/18)

Extension of time to file report, close trust accounts

5-50(3) The chief executive officer may extend the time for the member or the law firm to file the reports required in subsection (1) or to close the trust bank accounts as required by subsection (2) and may approve another form of report. (AM. 12/18)

Failure to file report

5-50(4) Where a member or law firm fails to file the report required under this rule within the time prescribed or within such other time requirement approved by the chief executive officer, the chief executive officer may require an investigator to inspect the accounts and records of the member or the law firm to determine whether there has been compliance with the rules in this division. (AM. 12/18)

Inspection report

5-50(5) The investigator must issue a report to the chief executive officer advising whether or not the member or law firm has complied with the rules in this division.
(AM. 12/18)

Costs of inspection

5-50(6) Where the chief executive officer authorizes an inspection under subsection (4), the member or the law firm must pay to the society the costs of the inspection of the accounts and records. (AM. 12/18)

Investigation of accounts and records

5-51(1) The benchers, the complaints investigation committee, or the chief executive officer may, at any time, require an investigator to investigate the accounts and records of a member or a law firm for the purpose of ascertaining whether there has been compliance with the Act, rules, and the provisions of the code. (AM. 05/08; 12/18)

Investigation report

5-51(2) Where the investigator determines that there has been non-compliance with the Act, rules or the provisions of the code, he or she must report the particulars of any breach to the chief executive officer. (AM. 05/08; 12/18)

Report may be treated as complaint

5-51(3) Where the chief executive officer receives a report pursuant to subsection (2) he or she may treat the report as if it were a complaint received under rule 5-60. (AM. 12/18)

Production of records

5-52(1) Subject to subsection (2), a member, the law firm and the trust account supervisor must co-operate with an investigator and must produce on demand and answer questions about all records, books, files and any other document, in any form, kept by or for the member or the law firm that may be reasonably required by the investigator to conduct his or her inspection or investigation. (AM. 12/03; 05/08; 12/18)

Production of general records

5-52(2) An investigator may only demand production of a member's or the law firm's general records and accounts when they are required by the investigator for the purposes of tracing trust funds or determining if trust funds have been deposited into the member's general account. (ENACTED 12/03) (AM. 12/18)

CDIC compliance

5-53 Where a pooled trust account, a restricted trust account or a specific trust investment account is maintained by a member or a law firm in a savings institution which is insured by the Canada Deposit Insurance Corporation ("CDIC") the member or law firm must comply with the reporting and disclosure obligations set forth in the Canada Deposit Insurance Corporation Act and the Schedule thereto. (AM. 09/17; 12/18)

Retention of records

5-54(1) A member must:

(a) keep the books, records and accounts referred to in this division for at least ten years; and

(b) on the completion and closing of a client's file, maintain an electronic copy in a universally readable format on the electronic file or place on the file a copy

of the individual client trust ledger.
(AM. 06/05; 12/18)

Location of records
5-54(2) A member or law firm must keep the books, records and accounts for all trust bank accounts and all general accounts referred to in this division pertaining to the most recent three-year period at the member's or the law firm's chief place of practice in Manitoba, unless otherwise authorized by the chief executive officer. (AM. 09/17; 12/18)

Unauthorized appropriation
5-55 A member must not appropriate any money or property of a client held in trust or otherwise under the member's control for or on account of the member's fees without the express or implied authority of the client. (AM. 12/18)

Failure to comply with rules
5-56 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct. (AM. 12/18)

Borrowing from client
5-56(1) Repealed (02/13)

Exceptions
5-56(2) Repealed (02/13)

Division 5 - Lawyers' Fees

Fees, disbursements and interest
5-57 A member must not charge or accept a fee, disbursement or expense, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion. (AM. 06/09; 12/18; 12/19)

Interest on unpaid fees
5-57(1) Repealed (06/09)

Rate of interest
5-57(2) Repealed (06/09)

Rate to be shown on bill
5-57(3) Repealed (06/09)

Real estate commission
5-58(1) A member must not:

(a) pay a real estate commission before he or she is in a position to disburse the balance of the sale proceeds;

(b) lend commission advances to real estate brokers or agents; or

(c) enter into an arrangement with a real estate broker or agent that involves the

broker or agent directing clients to the member in return for:

(i) a portion of the fee paid by the client to the member; or

(ii) a financial or other reward, direct or indirect.

(AM. 12/18)

Financial reward prohibited

5-58(2) A member must not receive a financial or other reward, directly or indirectly from an insurer, broker, agent or intermediary for recommending a title insurance product. (ENACTED 02/11) (AM. 12/18)

Fee arbitration

5-59 The chief executive officer may make available to members and their clients a fee arbitration process to resolve certain disputes about the fees charged by members. Both parties must consent to submit the dispute to arbitration. (AM. 12/18)

Division 6 - Complaints Investigation

Complaint must be in writing

5-60 A complaint about the conduct or competence of a member must be in writing.

Consideration by the CEO

5-61 The chief executive officer:

(a) must consider every complaint received under rule 5-60; and

(b) may treat as a complaint information that comes to the attention of the society about the conduct or competence of a member.

Complaint not meriting investigation

5-62(1) The chief executive officer must not investigate a complaint when he or she determines that it does not merit investigation or is not within the jurisdiction of the society and must:

(a) inform the complainant and member in writing of the decision not to investigate and the reason for that decision; and

(b) provide the member with a copy of the complaint.

(AM. 09/10)

Instructions to complainant

5-62(2) When the chief executive officer determines that a complaint does not merit investigation he or she must provide the complainant with instructions on how to apply for a review of that decision under rule 5-63. (ENACTED 09/10)

Complaints review commissioner

5-63(1) As part of the society's process for investigating and responding to complaints about members, the benchers must appoint a person who is not a member of the society, a

lawyer or a bencher to act as complaints review commissioner. (AM. 09/10)

Term of office

5-63(2) The complaints review commissioner must be appointed for a term not exceeding two years and is eligible for reappointment. The complaints review commissioner may be removed from office during his or her term by resolution passed by the benchers. (ENACTED 09/10)

Role of the complaints review commissioner

5-63(3) Subject to subsection (4), the complaints review commissioner may only review the following:

(a) a determination by the chief executive officer under rule 5-62 not to investigate a complaint because it is of no merit; and

(b) a decision by the chief executive officer under rule 5-66 not to refer a complaint to the complaints investigation committee for its consideration, except decisions under paragraphs (a)(iii), (e), (f) and (g) of rule 5-66.

(ENACTED 09/10) (AM. 06/11) (AM. 09/22)

No review

5-63(4) The complaints review commissioner must not review a complaint if he or she is of the opinion that it raises only issues relating to the negligence of a member or the amount of fees and disbursements charged by a member. (ENACTED 09/10)

Written request for review

5-63(5) Where the disposition of a complaint is subject to review under rule 5-63(3), the complainant must apply in writing to the complaints review commissioner within 60 days from the date the chief executive officer's decision was mailed to the complainant at his or her last known address. (AM. 09/10)

Notice to member

5-63(6) The chief executive officer must advise the member in writing when a complainant requests a review by the complaints review commissioner. (ENACTED 09/10)

Scope of review

5-63(7) The complaints review commissioner may review all files, records and documents obtained, collected or produced by the chief executive officer, including files and information that are subject to solicitor-client privilege and the complaints review commissioner must not disclose any privileged information, except as permitted under the Act. (AM. 09/10)

Decision

5-63(8) Following his or her review, the complaints review commissioner must:

(a) confirm the decision of the chief executive officer; or

(b) with respect to a review under rule 5-63(3)(a), direct the chief executive officer to investigate the complaint; or

(c) with respect to a review under rule 5-63(3)(b), direct the chief executive officer to refer the complaint to the complaints investigation committee for its consideration.

(AM. 09/10)

Notification of decision

5-63(9) The complaints review commissioner must notify the complainant, the member and the chief executive officer in writing of his or her decision and the reasons for that decision. (AM. 09/10)

Decision not subject to further review

5-63(10) Subject to subsection (11), a decision of the complaints review commissioner under subsection (8) is final and not subject to further review. (AM. 09/10)

Clarification

5-63(11) When the complaints review commissioner directs the chief executive officer to investigate a complaint that was determined to be of no merit under rule 5-62 and after investigating the complaint the chief executive officer determines not to refer the complaint to the complaints investigation committee for its consideration, the complainant may apply for a review of that decision under rule 5-63(3)(b). (ENACTED 09/10)

Investigation of complaints

5-64(1) Subject to rule 5-62, the chief executive officer must investigate a complaint to determine its validity.

Member to receive copy of complaint

5-64(2) The chief executive officer must send a letter to the member complained of enclosing a copy of the complaint or the relevant information.

Written Response

5-64(3) Subject to rule 5-65(2), a member who has been sent a letter under subsection (2), must respond in writing to the substance of the complaint and to further inquiries from the chief executive officer.

Response within 14 days

5-64(4) The member's response must be signed by the member personally or by his or her counsel and delivered to the chief executive officer within 14 days after the letter is received by the member or by such other date as may be set by the chief executive officer.

Failure to respond

5-64(5) A member's failure to respond in writing to the substance of a complaint or to further inquiries by the chief executive officer by the date set by the chief executive officer, without reasonable excuse, may constitute professional misconduct.

Copy of response must be sent to complainant

5-64(6) After receiving a response from a member, the chief executive officer must send a letter to the complainant enclosing either a copy of the member's response or a summary of it.

CEO investigation

5-64(7) The chief executive officer may appoint a member of the complaints investigation committee, counsel, or such other expert or person, as the chief executive officer considers appropriate, to assist in the investigation of a complaint.

Informal resolution of complaints

5-65(1) The chief executive officer may attempt to resolve a complaint informally at any time during his or her investigation of a complaint.

Written response not required

5-65(2) The chief executive officer may dispense with the requirement for a member to file a written response under rule 5-64(3), if he or she decides that the complaint may be satisfactorily resolved through informal means.

Where informal resolution unsuccessful

5-65(3) Where informal means do not satisfactorily resolve a complaint, the chief executive officer must investigate or continue the investigation of the complaint under rule 5-64.

Action after investigation

5-66 After investigating a complaint, the chief executive officer may:

(a) take no further action if he or she is satisfied that;

(i) the complaint is without substance or its substance cannot be proved;

(ii) the member has provided a satisfactory explanation; or

(iii) the complaint has been satisfactorily resolved through informal means;

(b) send a letter to the member reminding the member of his or her obligations under the Act, rules or code;

(c) send a letter to the member recommending that a certain course of action be taken;

(d) refer the complaint to the complaints investigation committee for its consideration;

(e) direct that a charge be laid against the member when the member has:

(i) failed to respond to communication from the society or provide a full and substantive response to questions raised in the communication; or

(ii) breached any condition or restriction imposed on the member by the society or any undertaking given to the society;

(f) require the member to appear personally before the complaints investigation committee to further the investigation of a complaint when the member has:

(i) failed to respond to communication from the society or provide a full

and substantive response to questions raised in the communication; or

(ii) breached any condition or restriction imposed on the member by the society or any undertaking given to the society:

(g) recommend that a member obtain healthcare treatment.

(AM. 06/11) (AM. 09/22)

Notice

5-67 The chief executive officer must notify the member and complainant in writing of the disposition of a complaint under rule 5-66 and, where applicable, must provide the complainant with instructions on how to apply for a review of the chief executive officer's decision under rule 5-63. (AM. 09/10)

Failure to follow CEO's recommendation

5-68 Where a member fails to satisfactorily follow a course of action recommended under rule 5-66(c), the chief executive officer may refer the complaint to the complaints investigation committee.

Division 7 - Complaints Investigation Committee

Definitions

5-69 In this division,

"chairperson" means the chairperson of the complaints investigation committee or his or her designate;

"committee" means the complaints investigation committee.

Committee objectives

5-70(1) The objectives of the committee are to:

(a) consider complaints referred to it about the conduct or competence of members;

(b) recommend the development of programs that will assist members to practise law competently; and

(c) identify members who do not meet accepted standards in the practice of law and recommend remedial measures to assist them to improve their legal practices.

Composition of committee

5-70(2) The benchers must appoint not less than six benchers to serve as committee members.

Quorum

5-70(3) At a meeting of the committee, three committee members constitute a quorum, provided that one of the committee members in attendance is a lawyer bencher.

(AM 10/19)

Consideration of complaint

5-71 The committee must consider any complaint referred to it by the chief executive officer, the complaints review commissioner or a committee of the society and while considering a complaint under this rule, the committee may also consider any other matters arising out of the member's practice of law. (AM. 09/10)

Investigation by committee

5-72(1) In considering a matter under rule 5-71 the committee may:

(a) send a letter to the member requiring the member to respond in writing to the substance of the complaint and to further inquiries from the committee;

(b) require the response to be signed by the member personally or by his or her counsel and delivered to the committee within 14 days after the letter is received by the member or by such other date as may be set by the committee; and

(c) appoint a member of the committee, counsel, or such other expert or person as the committee deems appropriate to assist in the investigation of the complaint.

Failure to respond

5-72(2) A member's failure to respond in writing to the substance of a complaint or to further inquiries by the committee by the date set by the committee, without reasonable excuse, may constitute professional misconduct.

Further investigation

5-72(3) The committee may instruct the chief executive officer to conduct a further investigation and, in doing so, the chief executive officer may utilize any investigative steps authorized under rule 5-64.

Appearance by member

5-72(4) The committee may require a member to appear personally before the committee to further its consideration of a complaint or to help determine whether the member is practising law competently, on such date and at such time as the committee considers appropriate.

Urgent matters

5-72(5) Where the chairperson of the committee is of the opinion that information concerning the conduct or competence of a member is of such an urgent nature that it requires immediate consideration by the committee, the chairperson may require the member to appear personally before the committee, on such date and at such time as the chairperson considers appropriate.

Failure to appear

5-72(6) A member's failure to appear before the committee on the date and at the

time set under subsections (4) or (5), or rule 5-66(f), without reasonable excuse, may constitute professional misconduct. (AM. 06/11)

Disqualification

5-73 A member of the committee must not consider a matter in which he or she or a member of his or her firm is either the complainant or the member whose conduct or competence is in question.

Action on complaints

5-74(1) After considering a complaint under rule 5-71, the committee may:

(a) decide to take no further action;

(b) send a letter to the member reminding the member of his or her obligations under the Act, rules or code;

(c) send a letter to the member recommending that a certain course of action be taken;

(d) make recommendations to the member under rule 5-83, which, if carried out, will improve the member's practice of law;

(e) decide to hold consideration of the complaint in abeyance until any related proceedings are concluded or until such time as the committee decides to resume consideration of the complaint;

(f) issue a formal caution to the member under rule 5-77;

(g) direct that a charge be laid against the member under rule 5-78(1);

(h) accept a written undertaking from the member under rule 5-79;

(i) impose restrictions on the member's practice of law or suspend him or her under subsection 68(c)(i) of the Act;

(j) order a practice review of the member's practice under rule 5-82(1);

(k) decide to hold disposition of the complaint in abeyance until the member has completed any action plan recommended under rule 5-83;

(l) suspend or impose restrictions on the permit of a member's law corporation under subsection 37(1) of the Act;

(m) recommend that the member obtain healthcare treatment.

(AM. 09/22)

Additional action

5-74(2) Subject to rule 5-77, the committee is not precluded from taking any of the steps in subsection (1) because it has previously taken another of those steps in the same matter.

Notice

5-75 The chief executive officer must notify the complainant and the member in writing of any determination by the committee under rule 5-74(1).

Reconsideration

5-76 A complaint that has been dealt with under rule 5-74(1)(a) may be reconsidered by the committee at a later date and be the subject of further action.

Formal caution

5-77(1) The committee may censure or disapprove of a member's conduct by issuing a formal caution to the member. If the caution is accepted by the member, it must be issued in writing to him or her, no other action must be taken by the committee under rule 5-74(1) and the caution must not be the subject of an appeal.

Member may refuse caution

5-77(2) If a member refuses to accept a formal caution, the committee must issue and proceed with a charge under rule 5-78.

Caution is confidential

5-77(3) A formal caution, if accepted, is confidential.

Permitted disclosure

5-77(4) Despite subsection (3), a formal caution and the circumstances surrounding it may be disclosed:

(a) to the committee, when it is considering any subsequent complaints about the member;

(b) to a discipline panel that later convicts the member of any charge, to assist it in determining the appropriate penalty;

(c) to the complainant, the member's designated person under rule 2-77, each other governing body of the legal profession in Canada of which the member is a member and in any database of membership information operating to facilitate the mobility of lawyers in Canada.

(AM. 02/05)

Charge

5-78(1) Where the committee or the chief executive officer directs that a charge be laid against a member, the chief executive officer must draft a charge that clearly states what the member is alleged to have done or omitted to do. (AM. 06/11)

Service of charge

5-78(2) A charge must be served on the member or his or her counsel and forwarded to the discipline committee. The charge must include a notice of the date, time and place:

(a) of the hearing; or

(b) for setting the hearing date

to determine the disposition of the charge against the member. (AM. 12/16)

Methods of service

5-78(3) Service on a member of a charge under subsection (2) may be effected by:

(a) serving the member personally;

(b) sending it by registered mail to the member's last known address; or

(c) serving it personally on the member's counsel or delivering a copy to the member's counsel by electronic or other means.

Substitutional service

5-78(4) Where it is impractical or impossible to serve the charge as required under subsection (3), a discipline panel may make an order for substitutional service.

Charges may be disclosed

5-78(5) Once charges have been served on a member, the chief executive officer may disclose the charges to the members of the society and to the public.

Undertaking to society

5-79(1) Where a member gives the committee a written undertaking to do or refrain from doing anything, the undertaking is deemed to be an undertaking given to the society.

Breach of undertaking

5-79(2) The failure of a member, without reasonable excuse, to comply with an undertaking given under subsection (1) may constitute professional misconduct.

Notifying member of suspension

5-80(1) When the committee suspends a member from practising law under subsection 68(c)(i) of the Act or the permit of the member's law corporation is suspended under subsection 37(1)(c) of the Act, the chief executive officer must notify the member in writing of the action taken and that the member has the right to appeal the decision under subsection 75(1) of the Act.

Method of service

5-80(2) Service of the notification under subsection (1) may be effected in accordance with rule 5-78.

Publication of suspension

5-81(1) When the committee suspends a member from practising law under subsection 68(c)(i) of the Act, or the permit of the member's law corporation is suspended under subsection 37(1)(c) of the Act, the chief executive officer must place a notice of the suspension in one issue of a newspaper that is in circulation:

(a) in the area where the member or law corporation has an office and from which the member or law corporation practises; or

(b) where the member or law corporation is no longer practising, in the area

where the member or law corporation last had an office and from which the member or law corporation last practised.

(AM. 06/03; 06/09)

Notice of suspension

5-81(2) When the committee suspends a member from practising law under subsection 68(c)(i) of the Act or the permit of the member's law corporation is suspended under subsection 37(1)(c) of the Act, the chief executive officer must give notice of the suspension to the members of the society, to the complainant, to each other governing body of the legal profession in Canada of which the member is a member, and the chief executive officer may disclose the suspension in any databank of membership information operating to facilitate the mobility of lawyers in Canada.

Publication of restrictions

5-81(3) Subject to subsection (4), when the committee imposes restrictions on a member's practice of law or on the member's law corporation permit under subsections 68(c)(i) or 37(1) of the Act, it may direct that the chief executive officer publish a notice of the restrictions to the members of the society or the public, or both, in a form and manner the committee considers appropriate. The chief executive officer may disclose the restrictions in any databank of membership information operating to facilitate the mobility of lawyers in Canada.

Publication of restrictions to refrain from practising certain areas of law

5-81(4) Where restrictions imposed under subsections 68(c)(i) or 37(1) of the Act require a member or his or her law corporation to refrain from practising in respect of certain areas of the law, the chief executive office must place a notice of the imposition of the restrictions in one issue of a newspaper that is in circulation:

(a) in the area where the member or law corporation has an office and from which the member or law corporation practises; or

(b) where the member or law corporation is no longer practising, in the area where the member or law corporation last had an office and from which the member or law corporation last practised.

(AM. 06/03; 06/09)

Notice of restrictions to refrain from practising certain areas of law

5-81(5) Where the restrictions imposed under subsections 68(c)(i) or 37(1) of the Act require the member or his or her law corporation to refrain from practising in respect of certain areas of the law, the chief executive officer must give notice of the restrictions to the members of the society, to the complainant, to each other governing body of the legal profession in Canada of which the member is a member, and the chief executive officer may disclose the restrictions in any databank of membership information operating to facilitate the mobility of lawyers in Canada.

Practice review

5-82(1) When the committee decides there are reasonable grounds to believe that a

member is practising law in an incompetent manner, the committee may order a practice review of the member's practice or the member may consent to the review.

Conduct of review

5-82(2) When a practice review is ordered, the chief executive officer must select one or more qualified persons to conduct the review.

Scope of review

5-82(3) The practice reviewers must conduct a review of some or all of the files of the member, or of the practice of the member or his or her law firm or both, including, where appropriate, an examination of the procedures in place to reduce the risk of liability insurance claims.

Obligation to co-operate

5-82(4) A member whose practice is being reviewed under subsection (1) must answer any inquiries and provide the practice reviewers with any information, files or records in his or her possession or power as may be reasonably requested.

Report to the committee

5-82(5) After completing a practice review, the practice reviewers must deliver a written report of their findings and recommendations to the committee. The chief executive officer must provide a copy of the report to the member.

Action on practice review report

5-83 After considering the report received under rule 5-82(5), the committee may take any of the steps outlined in rule 5-74(1) and may recommend that the member do one or more of the following:

(a) undertake not to practise certain areas of law;

(b) satisfactorily complete a remedial program;

(c) satisfactorily complete an examination approved by the committee or its designate;

(d) implement measures to reduce the risk of liability insurance claims;

(e) obtain a psychiatric or psychological assessment or counselling, or both, and if the committee requests, provide a report on that assessment or counselling to the committee;

(f) obtain a medical assessment or assistance or both, and if the committee requests, provide a report of that assessment or assistance to the committee;

(g) obtain such other reports, assessments or assistance as the committee considers appropriate and, if the committee requests, provide a report of that assessment or assistance to the committee;

(h) practise in a setting approved by the committee;

(i) take such other steps that the committee directs, that are intended to improve the member's practice of law or otherwise protect the public interest.

Remedial program

5-84 A remedial program under rule 5-83(b) may include any program approved by the committee that is intended to improve the member's knowledge and skill in the practice of law, including, but not limited to, one or more of the following:

(a) a continuing legal education course or activity;

(b) a remedial education course or activity;

(c) a course or activity offered by an educational institution;

(d) a program of mentoring or supervision by a practising member approved by the committee.

Completion dates

5-85(1) When making recommendations under rule 5-83, the committee may set one or more dates by which time the member is to complete the recommendations.

Extensions

5-85(2) The committee may extend the date by which the member is to complete a recommendation.

Notice to member

5-86 The chief executive officer must deliver a copy of the committee's recommendations to the member in writing.

Member refusal to accept recommendations or failure to complete

5-87 If the member refuses to accept the committee recommendations or having accepted the recommendations, fails, in the opinion of the committee, to satisfactorily complete the recommended action plan, the committee must proceed under rule 5-74(1).

Member acceptance of recommendations

5-88 If the member agrees to accept the committee recommendations, he or she must sign a written undertaking under rule 5-79(1).

Future access to report by committee

5-89 The committee, in considering a subsequent complaint against the member, may refer to:

(a) all or part of a practice review report delivered under rule 5-82(5);

(b) a committee recommendation under rule 5-83; and

(c) a report on the manner in which the member carried out or followed any previous recommendations or failed or refused to do so.

Future use of report and recommendation

5-90 A discipline panel may receive in evidence at an inquiry:

(a) all or any part of a practice review report delivered under rule 5-82(5);

(b) the committee recommendations under rule 5-83; and

(c) a report on the manner in which the member has carried out or followed any recommendation or failed or refused to do so.

Notice to complainant

5-91 The chief executive officer must notify the complainant in writing of the committee's decision under rule 5-82(1), but the complainant is not entitled to receive a copy of any report or the committee's recommendations about the member's practice.

Costs

5-92 The cost of a practice review, action or remedial program taken under rules 5-82, 5-83 and 5-84 must be shared between the member and the society based on a cost-sharing arrangement formulated by the committee.

Division 8 - Discipline Proceedings

5-93(1) – 5-93(4) Re-numbered and Restated

Definitions

5-93(1) In this division,

"committee" means the discipline committee.
(10/21)

Appointment of committee members

5-93(2) The benchers must appoint not less than six benchers to serve as members of the committee, and may appoint non-members to serve as members of the committee. (10/21)

Duties of the committee

5-93(3) The duties of the committee are to:

(a) hold hearings into charges against members;

(b) set dates for a hearing or the continuation of a hearing;

(c) determine preliminary motions;

(d) order or conduct pre-hearing conferences;

(e) hear reinstatement applications;

(f) hear pardon applications; and

(g) transact such other business as may come before them.

(ENACTED 01/15) (10/21)

Appointment of chairperson

5-93(4) The benchers:

(a) shall appoint a chairperson of the committee who must be a member of the society and who is not a bencher, officer or employee of the society;

(b) may appoint a vice-chairperson who must be a member of the society and who is a bencher;

(AM. 03/05; 01/15; 10/21)

General duties of the chairperson

5-93(5) The chairperson shall be responsible for the function and administration of the committee. When the chairperson is not available, the vice-chairperson may perform any function otherwise reserved to the chairperson.

(ENACTED 10/21)

Selection of panel members

5-93(6) The chairperson shall select members of the committee to a panel to conduct a hearing into the charges against a member.

(ENACTED 10/21)

Composition of panels

5-93(7) Each panel shall consist of three members of the committee where:

(a) one of the panel members must be a public representative; and

(b) two panel members must be members of the Society.

(ENACTED 10/21)

Exception to panel committee

5-93(8) If a member of a panel appointed under rule 5-93(7) who has participated in a hearing becomes unable, for any reason, to complete the hearing:

(a) the remaining two panel members may complete the hearing, as if fully constituted; or

(b) all parties to the matter may consent to a new panel being convened.

(ENACTED 10/21)

Administration of hearings

5-93(9) The chairperson, a panel of the committee, or a single member of the committee designated by the chairperson, may;

(a) set a schedule for a hearing or continuation of a hearing;

(b) adjourn a hearing;

(c) order a pre-hearing conference;

(d) conduct a pre-hearing conference;

(e) give such directions and impose such terms as may facilitate the just disposition of a disciplinary proceeding;

(f) make an order for substitutional service;

(g) hear and determine preliminary motions;

and for any such purposes hold a hearing in such form as the chairperson, designated member, or panel may direct.
(ENACTED 10/21)

Panel required to hear and determine certain matters
5-93(10) Only a panel of the committee may hear and determine the substance of;

(a) the charges against a member;

(b) an application for reinstatement; or

(c) a pardon application;

and such panel need not be the same panel as a panel appointed for the purposes set out in rule 5-93(9). (ENACTED 10/21)

Composition of discipline panels
5-94(1) Repealed (10/21)

Exception
5-94(2) Repealed (01/15)

Disqualification
5-95 A member of the committee must not sit as a member of a panel where:

(a) the committee member or any other member of his or her law firm:

(i) is the complainant or has advised the complainant in connection with the matter that is the subject of the hearing;

(ii) will be a witness;

(iii) conducted the pre-hearing conference in the matter that is the subject of the hearing unless the parties consent to the member sitting as a member of the panel; or

(b) a member of his or her firm:

(i) is the member whose conduct or competence is the subject of the hearing;

(ii) is appearing as counsel; or

(iii) the committee member sat as a member of the complaints investigation committee when it considered the matter that is the subject of the hearing.

(AM. 10/21)

Chairperson to appoint panel
5-96(1) Repealed (10/21)

Right to counsel
5-96(2) A member whose conduct or competence is the subject of a hearing is entitled to be represented by counsel.

Law society counsel
5-96(3) The chief executive officer may appoint counsel employed by the society or retain other counsel to draft and prosecute a charge.

Setting and serving notice of a hearing date
5-96(4) The date, time and place for a hearing must be set by agreement between counsel for the society and the member or his or her counsel or failing agreement, by the chairperson. Notice of the date, time and place of the hearing must be served on the member or his or her counsel. (AM. 09/13)

Method of service
5-96(4.1) Service of the notice under subsection (4) may be effected in accordance with rules 5-78(3) and 5-78(4). (ENACTED 09/13)

Resolution of panel
5-96(5) After hearing and considering the evidence and representations made, a panel must make and record a resolution stating:

(a) which, if any, of the acts or omissions stated in the charge have been proven to the satisfaction of the panel; and

(b) whether or not, by the acts or omissions so proved, the member is guilty of professional misconduct or conduct unbecoming a lawyer or student, or incompetence.

(AM. 10/21)

Dismissal of charge
5-96(6) When a panel finds that a member is not guilty of professional misconduct or conduct unbecoming a lawyer or student, or incompetence, it must dismiss the charge.
(AM. 10/21)

Consequences
5-96(7) When a panel finds that a member is guilty of professional misconduct or of conduct unbecoming a lawyer or student or incompetence, it may impose one or more of the consequences set out under sections 72 and 73 of the Act.
(AM. 10/21)

Costs

5-96(8) When a panel finds that a member is guilty of professional misconduct or of conduct unbecoming a lawyer or student, or incompetence, it may, pursuant to section 72 of the Act, order the member to pay all or any part of the costs incurred by the society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty including, but not limited to, the following items:

(a) all reasonable disbursements incurred by the society in investigating and proceeding to the hearing;

(b) audit fees for time spent by auditors/investigators employed by the society in investigating and proceeding to the hearing, at rates set from time to time by the chief executive officer. These rates must reflect the actual costs connected with the investigation and hearing;

(c) counsel fees for time spent by lawyers in investigating and preparing for proceeding to the hearing, but excluding the time spent at the hearing of the matter, at rates set from time to time by the chief executive officer. These rates must reflect the actual costs connected with the investigation and hearing;

(d) $500 for each one-half day of hearing, including the hearing of motions, arguments and other proceedings; and

(e) honoraria paid to members of the panel who sit on a hearing, including the hearing of motions, arguments, and other proceedings.

(AM. 10/21)

Public access to record of hearing

5-96(9) The chief executive officer may disclose the record of the hearing to the members of the society and to the public, except for any parts of the record pertaining to proceedings held in camera.

Record of hearing

5-96(10) For the purposes of rule 5-96(9), the record of the hearing includes, but is not limited to:

(a) the citation of the charges laid under rule 5-78(1);

(b) the exhibits submitted in evidence at the hearing;

(c) the transcript of the hearing; and

(d) the written reasons of the panel or the transcript of the panel's oral reasons.

(AM. 10/21)

Service of decision on member

5-97 Following a hearing, the chief executive officer must serve a copy of the written reasons of the panel on the member or his or her counsel. When a member has been found

guilty of professional misconduct or of conduct unbecoming a lawyer or student, or incompetence, the chief executive officer must also notify the member or his or her counsel of the member's right to appeal the decision under section 76 of the Act.
(AM. 10/21)

Report to complaints investigation committee
5-98 Following a hearing, the chief executive officer must provide a report, to include a copy of the written reasons of the panel, to the chairperson of the complaints investigation committee. (AM. 10/21)

Report to benchers
5-99 The panel must report its findings and disposition to the benchers at the first bencher meeting following the hearing.
(AM. 10/21)

Publication of disbarment, suspension, resignation, restrictions on practice
5-100(1) When a lawyer is disbarred or suspended from practising law or permitted to resign his or her membership in the society or restrictions are imposed on the lawyer's practice that he or she refrain from practising in respect of certain areas of the law or where the permit of the lawyer's law corporation is revoked or suspended as a result of a finding of:

(a) professional misconduct;

(b) conduct unbecoming a lawyer; or

(c) incompetence;

the chief executive officer must place a notice of the action taken in one issue of a newspaper that is in circulation:

(d) in the area where the lawyer or law corporation has an office and from which the lawyer or law corporation practises; or

(e) where the lawyer or law corporation is no longer practising, in the area where the lawyer or law corporation last practised and from which the lawyer or law corporation last practised.

(AM. 06/03; 06/09)

Notice when member found guilty
5-100(2) When a member is found guilty of professional misconduct, or conduct unbecoming a lawyer or student, or incompetence, the chief executive officer must give notice of the finding to the members of the society, to any party whose complaint gave rise to the charge against the member, to each other governing body of the legal profession in Canada of which the member is a member and the chief executive office may disclose the conviction in any database of membership information operating to facilitate the mobility of lawyers in Canada. The notice must include:

(a) the name of the member;

(b) the name of the member's law corporation, if the member is the sole voting shareholder;

(c) the nature of the charge pursuant to which the member was found guilty, including brief particulars;

(d) the penalty imposed, including any restrictions; and

(e) any costs imposed.

The panel may direct the chief executive officer to publish to the public such information concerning its findings as it considers appropriate in the circumstances in such manner and by such means as it may determine. (AM. 10/21)

Notice when member found not guilty

5-100(3) When a member is found not guilty of professional misconduct, or conduct unbecoming a lawyer or student or incompetence, the chief executive officer must:

(a) give notice of the decision to any party whose complaint gave rise to the charge; and

(b) give notice of the finding to the members of the society. This notice must include the nature of the charge but must not disclose the name of the member or the name of the member's law corporation without the member's consent.

The panel may direct the chief executive officer to publish to the public such additional information concerning its findings as it considers appropriate in the circumstances in such manner and by such means as it may determine. (AM. 02/13; 10/21)

Further investigation

5-101 When, in the course of a hearing, a matter concerning the conduct or competence of a member comes to the attention of the panel, and it is of the opinion that the conduct or competence requires investigation, the panel may refer the matter to the chief executive officer for investigation under division 6 of this Part. (AM. 10/21)

Application for a pardon

5-101.1(1) Subject to subsection (2), in circumstances where:

(a) a member's conduct was censured by the Complaints Investigation Committee and the member accepted a formal caution; or

(b) a panel found a member guilty of professional misconduct or conduct unbecoming a lawyer or student or incompetence and imposed a reprimand or fine, with or without an order of costs, and no other order, action or penalty was imposed on the member by the panel as a result of that conviction,

the member may apply to the committee for a pardon. (ENACTED 03/05) (AM. 10/21)

Definition of pardon

5-101.1(2) A pardon is evidence of the fact that the Society no longer considers the censure or conviction to reflect adversely on the member's character. (ENACTED 03/05)

Application criteria

5-101.1(3) At the time a member makes an application under subsection (1), the following criteria must be satisfied:

(a) ten years have passed since the date of the censure or conviction;

(b) since the date of the censure or conviction the member has not accepted any other formal cautions and has not been found guilty of any other charges of professional misconduct, conduct unbecoming a lawyer or student or incompetence;

(c) there are no charges pending against the member;

(d) there are no complaints about the member under investigation;

(e) the member has paid the society all money owing by the member to the society; and

(f) a panel has not granted any previous application by the member under this rule.

(ENACTED 03/05) (AM. 10/21)

Convening a hearing

5-101.1(4) Where the chairperson of the committee is satisfied that the applicant has met the criteria set out in subsection (3), the chairperson must establish a panel to hear the application and make a determination. A hearing date must be set and notice provided to the applicant in accordance with rule 5-96(4). (ENACTED 03/05) (AM. 10/21)

Role of panel

5-101.1(5) A panel may grant a pardon if it determines that:

(a) the member has met all the criteria set out in subsection (3); and

(b) under all the circumstances, a pardon is appropriate.

(ENACTED 03/05)

Service of decision on applicant

5-101.1(6) Following a hearing, the chief executive officer must serve a copy of the written decision of the panel on the member or his or her counsel in accordance with rules 5-78(3) and 5-78(4). (ENACTED 03/05) (AM. 10/21)

Disclosure of pardoned censure or conviction

5-101.1(7) A determination by a panel to grant a pardon does not set aside the censure or conviction or relieve the society of any obligation to disclose the censure or conviction under the Act or these rules. Any disclosure of a censure or conviction that has been

pardoned must also disclose that the member has received a pardon and that the Society no longer considers the censure or conviction to reflect adversely on the member's character. (ENACTED 03/05) (AM. 10/21)

Division 9 - Reinstatement

Reinstatement

5-102(1) A person who has been disbarred and struck off the rolls or permitted to resign his or her membership in the society or a student, who has been expelled and had his or her name struck off the student register may seek to be reinstated by making written application to the chief executive officer and paying the required fee.

Required material

5-102(2) An applicant must submit a statutory declaration, with attachments verifying the information contained therein, showing:

(a) the character, conduct, habits of life, particulars of employment and means of livelihood of the applicant since he or she ceased to be a member of the society;

(b) the applicant's present financial position;

(c) that restitution of any property and payment of all money that was misappropriated or converted by the applicant has been made, or the reason why restitution or payment has not been made;

(d) that the applicant has paid back to the society any money paid out of the reimbursement fund for any misappropriation or conversion by the applicant;

(e) the source from which and the manner in which money was obtained by the applicant in order to make the payments in clauses (c) and (d);

(f) particulars of any other matters that might be the subject of a complaint to the society;

(g) payment of all money owing by the applicant to the society or a proposal for repayment acceptable to the chief executive officer;

(h) that the applicant has not, since he or she ceased to be a member of the society, contravened any provision of the Act; and

(i) such other material as the society may require.

Notice of application

5-102(3) Repealed (06/04)

Publication

5-102(4) Repealed (06/04)

Notice to members
5-102(5) Repealed (06/04)

Referral to committee
5-102(6) Repealed (06/04)

Student application
5-102(7) Repealed (06/04)

Investigation
5-103 Repealed (06/04)

Convening of hearing
5-104(1) The chairperson of the discipline committee must establish a discipline panel to hear an application under rule 5-102 and make a determination. A hearing date must be set and notice provided to the applicant in accordance with rule 5-96(4). (AM. 06/04)

Notice of hearing
5-104(2) Repealed (06/04)

Appearance of applicant
5-105(1) Repealed (06/04)

Counsel and evidence
5-105(2) Repealed (06/04)

Waiver of rules
5-106 Repealed (06/04)

Resolution of panel
5-107 After hearing and considering the evidence and representations made, the discipline panel must:

(a) reinstate the applicant as a member of the society, imposing such restrictions or conditions on the applicant's practice as it considers appropriate; or

(b) refuse to reinstate the applicant as a member of the society.

Service of decision on applicant
5-108 Following a hearing, the chief executive officer must serve a copy of the written reasons of the discipline panel on the member or his or her counsel and give notice of the decision to the members of the society. The discipline panel may direct the chief executive officer to publish to the public such information concerning its decision as it considers appropriate in the circumstances in such manner and by such means as it may determine. (AM. 06/04)

Methods of service
5-109 Service on a member or his or her counsel of the notice required under rule 5-96(4) and of the decisions referenced in rules 5-97 and 5-108 may be effected in

accordance with rules 5-78(3) and 5-78(4). (AM. 06/04)

Division 10 - Law Firm Name, Letterhead and Marketing of Professional Services

(AM. 02/11)

Firm letterhead

5-110 A law firm letterhead must not mislead the public. A limited liability partnership must disclose on its letterhead that it is practising as a limited liability partnership. A lawyer practising law through a law corporation must disclose on his or her letterhead that legal services are being provided by a law corporation. (AM. 02/03; 12/04; 02/11)

Persons listed on firm letterhead

5-111 A member may list on his or her firm letterhead only the following persons:

(a) the names of practising lawyers who are members in good standing of the society;

(b) the names of retired or deceased members of the society provided the persons are appropriately designated as such;

(c) the names of articling students, paralegals, or non-lawyers, provided the persons are appropriately designated as such; and

(d) where the firm is not a law corporation, the names of lawyers who reside outside Manitoba and who are partners or associates of the Manitoba member or firm by virtue of an inter-jurisdictional law firm arrangement, provided the letterhead clearly designates those members of the firm who are not entitled to practise law in Manitoba.

(AM. 02/11)

Law firm name

5-112 A practising lawyer, including a lawyer practising through a law corporation or a limited liability partnership, must carry on the practice of law under a firm name that does not mislead the public and complies with applicable provincial and federal statutes and regulations. (AM. 02/03; 02/11)

Misleading phrases

5-112(2) Repealed (02/11)

Law corporation name

5-113(1) Repealed (02/11)

Limited liability partnership name

5-113(2) Repealed (02/11)

Marketing of professional services

5-114(1) A member or law firm may market professional services, provided the marketing:

(a) is demonstrably true, accurate, and verifiable;

(b) is not misleading, confusing or deceptive or likely to mislead, confuse or deceive;

(c) is in the best interests of the public and consistent with a high standard of professionalism;

(d) of a law corporation is done under the name of the corporation;

(e) of a limited liability partnership is done under the name of the limited liability partnership.

(AM. 10/05; 02/11)

Preferred areas of practice

5-114(2) A member or law firm may advertise a preferred area or areas of practice provided the advertisement does not contain a claim, either directly or indirectly, that the advertising member or law firm is a specialist or expert.

Failure to comply with rule

5-114(3) Failure to comply with sub-sections (1) or (2), without reasonable excuse, many constitute professional misconduct.

Division 11 - Equity Officer

Equity Officer

5-115(1) The chief executive officer may appoint an equity officer to encourage equitable workplace practices and assist lawyers, articling students, persons working for legal employers and clients in resolving concerns or questions relating to discrimination and harassment. (ENACTED 03/05) (AM.04/18)

Communication with equity officer

5-115(2) Subject to subsection (3), communication between the equity officer acting in that capacity and any person receiving or seeking assistance from the equity officer is confidential and may not be disclosed in any proceedings under the Act or rules without the consent of all parties to the proceedings. (ENACTED 03/05) (AM.04/18)

Obligation under code

5-115(3) The equity officer is not relieved of the obligation to report to the society under rule 7.1-3 of the code. (ENACTED 03/05) (AM.04/18)

Division 12 - Client Identification and Verification

(ENACTED 12/08)

Definitions

5-116 In this division,

"client" includes

(a) another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and

(b) in rules 5-120 to 5-124, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction;

(ENACTED 01/09)

"credit union central" means a central cooperative credit society, as defined in section 2 of the *Cooperative Credit Associations Act*, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial or territorial Act other than one enacted by the legislature of Quebec; (ENACTED 12/19)

"disbursements" means amounts paid or required to be paid to a third party by the member or the law firm on a client's behalf in connection with the provision of legal services to the client by the member or the law firm which will be reimbursed by the client; (ENACTED 12/19)

"expenses" means costs incurred by a member or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs; (ENACTED 12/19)

"financial institution" means

(a) a bank that is regulated by the *Bank Act*,

(b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada,

(c) a co-operative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,

(d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),

(e) a financial services cooperative,

(f) a credit union central,

(g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),

(h) a trust company or loan company that is regulated by a provincial or territorial Act,

(i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or

(j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution;

(AM. 12/19)

"financial services cooperative" means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins,* S.Q. 2000, c.77 other than a caisse populaire; (ENACTED 12/19)

"financial transaction" means the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money;

"lawyer" means a member of a governing body who is authorized to practice law in another Canadian jurisdiction; (ENACTED 01/09)

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or right to or interest in them; (AM. 02/09)
(AM. 12/19)

"organization" means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

"professional fees" mean amounts billed or to be billed to a client for legal services provided or to be provided to the client by the member or the law firm; (ENACTED 12/19)

"public body" means

(a) a department or agent of Her Majesty in right of Canada or of a province or territory,

(b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada of any of them,

(c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada, including any local board as defined in *The Municipal Act* or similar body incorporated under the law of another province or territory,

(d) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization, (AM. 01/09)

(e) an organization incorporated under an Act of Canada or of a province or territory for a public purpose; or (AM. 01/09)

(f) a subsidiary of a public body whose financial statements are consolidated

within those of a public body;
(ENACTED 01/09) (AM. 12/19)

"reporting issuer" means an organization that is a reporting issuer within the meaning of the securities law of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange that is designated under section 262 of *The Income Tax Act* (Canada), and operates in a country that is a member of the Financial Action Task Force and includes a subsidiary of that organization or corporation whose financial statements are consolidated with those of the organization or corporation; (ENACTED 01/09) (AM. 02/09; AM. 12/19)

"securities dealer" means a person or entity authorized under provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than persons who act exclusively on behalf of such an authorized person or entity.
(ENACTED 01/09) (AM. 12/19)

Control
5-116(2) Repealed (12/19)

Application
5-117(1) Subject to subsection (2), this division applies to a member who is retained by a client to provide legal services, in keeping with the lawyer's obligation to know his or her client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client, as articulated in the *Code of Professional Conduct.* (AM. 12/19)

Exemptions
5-117(2) Rules 5-118 to 5-129 do not apply when a member provides legal services

(a) on behalf of the member's employer or engages in or gives instructions in respect of financial transactions solely in that capacity,

(b) that do not involve a financial transaction in the following circumstances

(i) as part of a duty counsel program sponsored by a non-profit organization,

(ii) in the form of pro bono summary advice, or

(c) if another member or lawyer who has complied with rules 5-118 to 5-129 or the equivalent provisions of a governing body

(i) engages the member to provide legal services to the client as an agent, or

(ii) refers a matter to the member for the provision of legal services.
(AM. 01/09; AM. 12/19)

Interpretation

5-117(3) In this division, the responsibilities of a member may be fulfilled by any member, associate or employee of the member's firm, wherever located. (ENACTED 01/09) (AM. 12/19)

Client identification

5-118(1) A member who is retained by a client to provide legal services must obtain and record, with the applicable date, the following information:

(a) for an individual

(i) the client's full name,

(ii) the client's home address and home telephone number,

(iii) the client's occupation or occupations, and

(iv) the address and telephone number of the client's place of work or employment, where applicable,

(b) for an organization

(i) the client's full name, business address and business telephone number,

(ii) other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable, (AM 01/09)

(iii) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable,

(iv) the name, position and contact information for the individual who is authorized to provide and gives instructions to the member with respect to the matter for which the member is retained,

(c) if the client is acting for or representing a third party, information about the third party as set out in subsections (a) or (b) as applicable.

(AM 01/09; AM. 12/19)

Subsequent identification not required

5-118(2) Repealed (12/19)

Verification of Client's Identity - Exemptions

5-119 Rules 5-120 to 5-125 do not apply

(a) if the client is

(i) a financial institution,

(ii) a public body,

(iii) a reporting issuer, or

(iv) an individual who instructs the member on behalf of a client described in subparagraphs (i) to (iii),

(b) when the member

(i) pays to or receives funds from a financial institution, public body, or a reporting issuer,

(ii) receives funds from the trust account of another lawyer,

(iii) receives funds from a peace officer, law enforcement agency or other public official acting in his or her official capacity,

(iv) receives or pays funds to pay a fine, penalty or bail,

(v) receives or pays funds for professional fees, disbursements or expenses;

(c) to a transaction in which funds involved are transferred by electronic transmission provided that

(i) the transfer occurs between financial institutions or financial entities head-quartered in and operating in countries that are members of the Financial Action Task Force,

(ii) neither the sending nor the receiving account holders handle or transfer the funds, and

(iii) the transmission record contains

A. a reference number,

B. the date,

C. the transfer amount,

D. the currency, and

E. the names of the sending and receiving holders and the sending and receiving entities.

(AM 01/09; 12/19)

Requirement to Verify Client's Identity

5-120 When a member provides legal services in respect of a financial transaction the member must:

(a) obtain from the client and record, with the applicable date, information about the source of the funds, and

(b) verify the identity of the client, including the individuals described in rule 5-118(1)(b)(iv) and, where appropriate, the third party using the documents or information described in rule 5-121.

(AM. 12/19)

Documents and Information to Verify Individual's Identity

5-121(1) For the purposes of rule 5-120, if the client or third party is an individual, the individual's identity must be verified by referring to the following documents, which must be valid, authentic and current, or the following information, which must be valid and current,

(a) an identification document containing the individual's name and photograph that is issued by the federal government, a provincial or territorial government or a foreign government, other than a municipal government, that is used in the presence of the individual to verify that the name and photograph are those of the individual, or

(b) information that is in the individual's credit file if that file is located in Canada and has been in existence for at least three years that is used to verify that the name, address and date of birth in the credit file are those of the individual, or

(c) any two of the following with respect to the individual

(i) information from a reliable source that contains the individual's name and address that is used to verify that the name and address are of those of the individual,

(ii) information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual, or

(iii) information that contains the individual's name and confirms that they have a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information.

(ENACTED 12/19) (AM. 12/23)

Restriction on Source of Information

5-121(2) For the purposes of rule 5-121(1)(c)(i), (ii) and (iii), the information referred to must be from different sources and the individual, lawyer and agent cannot be a source. (ENACTED 12/19)

Minor Clients

5-121(3) If the client is an individual who is

(a) under 12 years of age, the member must verify the identity of the individual's parent or guardian,

(b) at least 12 years of age but not more than 15 years of age, the member may verify the identity of the individual by referring to information under rule 5-

121(1)(c)(i) that contains the name and address of the individual's parent or guardian and verifying that the address is that of the individual.

(ENACTED 12/19)

Documents and Information to Verify Organization's Identity
5-121(4)

(a) If the client or third party is an organization such as a corporation or a society that is created or registered pursuant to legislative authority, the organization's identity must be verified by a written confirmation from a government registry as to the existence, name and address of the organization including the names of its directors, where applicable,

such as

(i) a certificate of corporate status issued by a public body,

(ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or

(iii) a copy of a similar record obtained from a public body that confirms the organization's existence,

(b) if the client or third party is an organization, other than a corporation or society that is not registered in any government registry, such as a trust or partnership, the organization's identity must be verified by a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization. (AM. 12/19)

Requirement to Identify Directors, Shareholders and Owners
5-121(5) If the client or third party is an organization, the member must

(a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer, and

(b) make reasonable efforts to obtain, and if obtained, record with the applicable date

(i) the names and addresses of all persons who own, directly or indirectly, 25 percent or more of the organization or of the shares of the organization,

(ii) the names and addresses of all trustees, all known beneficiaries and settlors of the trust, and

(iii) in all cases, information establishing the ownership, control and structure of the organization. (AM. 12/19)

Reasonable Measures to Confirm Information

5-121(6) The member must take reasonable measures to confirm the accuracy of the information obtained under rule 5-121(5). (ENACTED 12/19)

Requirement to Record Efforts and Measures

5-121(7) The member must keep a record, with the applicable dates, that sets out

(a) the efforts made under rule 5-121(5)(b),

and

(b) the measures taken to confirm the accuracy of information obtained under rule 5-121(5).

(ENACTED 12/19)

Alternative Measures

5-121(8) If the member is not able to obtain the information referred to in rule 5-121(5) or confirm the accuracy of that information in accordance with rule 5-121(6), the member must

(a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization,

(b) determine whether

(i) the client's information in respect of its activities,

(ii) the client's information in respect of the source of the funds, and

(iii) the client's instructions in respect of the transaction are consistent with the purpose of the retainer and the information obtained about the client as required by this rule,

(c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct, and

(d) keep a record, with the applicable date, of the results of the determination and assessment under subrules (b) and (c).

(ENACTED 12/19)

Timing of Verification – Individuals

5-122 A member must verify the identity of

(a) a client who is an individual, and

(b) an individual who is authorized to provide and gives instructions on behalf of an organization with respect to the matter for which the lawyer is retained

upon engaging in or giving instructions in respect of the financial transaction. (AM. 12/19)

Client identification and verification in non-face-to-face transactions
5-122(1) Repealed (12/19)

Client present elsewhere in Canada
5-122(2) Repealed (12/19)

Attestation
5-122(3) Repealed (12/19)

Permitted guarantors
5-122(4) Repealed (12/19)

Timing of Verification – Organizations
5-123 A member should verify the identity of a client that is an organization upon engaging in or giving instructions in respect of the financial transaction, but in any event, not later than 30 days thereafter. (AM. 12/19)

Subsequent Verification Not Required
5-124 Where the member has verified the identity of a client that is

(a) an individual, the member is not required to subsequently verify that same identity unless the member has reason to believe the information or the accuracy of it has changed,

(b) an organization and obtained information pursuant to rule 5-121(5), the member is not required to subsequently verify that identity or obtain that information unless the member has reason to believe the information or the accuracy of it has changed.

(AM. 12/19)

Use of Agent Permitted
5-125(1) A member may rely on an agent to verify the identity of an individual client, third party or individual described in rule 5-118(1)(b)(iv) as required in the rules in this division provided that the member and agent have an agreement or arrangement in writing for this purpose. (ENACTED 12/19)

Use of Agent Required
5-125(2) Repealed (12/23)

Requirements of Agent Agreement
5-125 (3) A member who enters into an agreement or arrangement referred to in sub rule (1) must

(a) obtain from the agent, the information that is obtained by the agent to verify the client's or person's identity, and

(b) satisfy himself or herself that the information is valid and current and that the agent verified the identity in accordance with the rules in this division.

(AM. 12/19; AM. 12/23)

Previous Verification by Agent

5-125(4) A member may rely on the agent's previous verification of an individual client, third party or an individual described in rule 5-118(1)(b)(iv) if the agent was, at the time that he or she verified the identity,

(a) acting in his or her own capacity, whether or not the agent was required to verify identity under this rule, or

(b) acting as an agent under an agreement or arrangement in writing, entered into with another lawyer who is required to verify identity under this rule, for the purpose of verifying identity in accordance with the rules in this division.

(ENACTED 12/19)

Record Keeping and Retention

5-126 A member:

(a) must obtain and retain a copy of every document used to verify the identity of any client for the purposes of rule 5-121,

(b) may maintain the documents used to verify the identity of the client in electronic form, provided that they are saved in a universally readable format,

(c) must retain a record of the information, with the applicable date, and any documents obtained for the purposes of rules 5-118, 5-120 and 5-129 for the longer of

(i) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing service to the client, and

(ii) a period of at least six years following completion of the work for which the member was retained.

(AM. 12/19)

Form of documents

5-126(2) The documents referred to in subsection (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

Application

5-127 Rules 5-117 to 5-126 apply to all matters for which a member is retained on or after January 1, 2020 regardless of whether the client is a new or existing client.
(ENACTED 12/19)

Duty to Withdraw – Information Obtained at time of Retainer

5-128 If, in the course of identifying or verifying the identity of a client, a member obtains information that causes the member to know or ought to know that he or she would be assisting a client in fraud or other illegal conduct, the member must withdraw from representing the client. (AM. 12/19)

Duty to Monitor Relationship

5-129 During a retainer with a client in respect of a financial transaction, the member must

(a) monitor on a periodic basis the professional business relationship with the client for the purposes of

(i) determining whether

A. the client's information in respect of the client's activities,

B. the client's information in respect of the source of the funds,

C. the client's instructions in respect of financial transactions are consistent with the purpose of the retainer and the information obtained about the client, and

(ii) assessing whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct, and

(b) keep a record, with the applicable date, of the measures taken and the information obtained pursuant to subrule (a)(i). (ENACTED 12/19) (AM. 12/23)

Criminal activity: duty to withdraw after being retained

5-129(1) Repealed (12/23)

Duty to Withdraw – Information during Retainer

5-130 During the course of a retainer, if a member knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the member must withdraw from representing the client. (AM. 12/19)

Failure to Comply

5-131 Failure to comply with any of the rules in this division without reasonable excuse may constitute professional misconduct. (ENACTED 01/09) (AM. 12/19)

Part 6
Repeal and Coming into Force of Rules

Definitions

6-1 In this Part

"the former rules" means the rules of the Law Society of Manitoba enacted effective February 1, 1992, and all subsequent amendments of those rules.

Repeal of former rules

6-2 The former rules are repealed effective October 31, 2002.

Coming into force

6-3 These rules come into force on October 31, 2002.

Transitional: proceedings

6-4 Any complaints, investigations or proceedings commenced under The Law Society Act with respect to the conduct or competence of a member or other persons entitled to practise law or prohibited from practising law in Manitoba under that Act are continued under The Legal Profession Act. The Legal Profession Act and these rules apply with necessary changes to those complaints, investigations or proceedings as if they had been commenced under The Legal Profession Act.